



# Federal Register

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Proclamation 8495 of April 9, 2010

The President

Pan American Day and Pan American Week, 2010

By the President of the United States of America

## A Proclamation

More than 200 years of history and significant current events have reinforced the strong bonds of friendship and common purpose among the nations and people of the Americas. The year 2010 marks the 80th anniversary of the first Pan American Day Proclamation; the centennial anniversary of the dedication of the Organization of American States' headquarters, the Pan American Union Building; and the bicentennials of four of our fellow republics: Argentina, Colombia, Mexico, and Chile.

These milestones remind us of our shared histories of independence and interdependence, and of our long and arduous journeys toward the just, free, inclusive, and prosperous nations our founders envisioned. My Administration is committed to building strong partnerships in the Americas. We are focused on supporting social and economic opportunity, ensuring the safety of our citizens, strengthening democratic institutions and accountability, and building a secure and clean energy future. This is the message members of the Administration are carrying with them throughout the Americas, and the United States will focus on these principles as we partner with friends and neighbors across the Americas.

Our combined response to this year's devastating earthquakes in Haiti and Chile demonstrates the enduring strength of Pan American solidarity. As we mourn these tragic losses of life, hope prevails in our hemisphere's extraordinary assistance to the Haitian and Chilean peoples. The United States will continue to support these reconstruction efforts.

As we commemorate this year's special anniversaries and take note of our combined rescue and relief efforts, let us reaffirm the vision President Franklin Delano Roosevelt expressed at the 1936 Inter-American Conference for the Maintenance of Peace: "We took from our ancestors a great dream. We here offer it back as a great unified reality." Once again, we stand ready to usher in a new era of cooperation to advance the security, prosperity, and liberty of all our peoples.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 14, 2010, as Pan American Day and April 11 through 17 as Pan American Week. I urge the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of April, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a horizontal line extending to the right.

[FR Doc. 2010-8672

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## Presidential Documents

**Proclamation 8496 of April 9, 2010**

### **National Former Prisoner of War Recognition Day, 2010**

**By the President of the United States of America**

#### **A Proclamation**

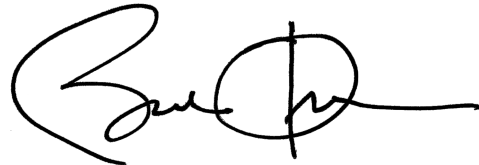
Our Nation's former prisoners of war faced tremendous challenges and dangers to protect us all. Many gave their last full measure of devotion to defend our freedom, and we are forever in their debt. Each year, on National Former Prisoner of War Recognition Day, the American people pay tribute to these heroes.

Through multiple wars, thousands of American service members have faced unimaginable cruelty and unspeakable treatment at the hands of foreign captors. Many sacrificed their own well-being to protect their fellow prisoners, the war effort, and our country. The families suffered as well, unsure of their loved ones' fates, just as the captured warriors were unsure of what the next day would bring. Not all of these courageous men and women, who persevered bravely and sometimes alone, are prominently noted in our history books. Yet, their stories are etched in our national conscience, and their courage is enshrined in the tradition of honor and bravery that is the mark of our Armed Forces.

America's former prisoners of war gave their freedom so that we can enjoy our own. We may never know the full extent of injuries received nor burdens borne by these heroes and their families, but neither shall we forget their selfless sacrifice and unshakeable resolve.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2010, as National Former Prisoner of War Recognition Day. I call upon all Americans to observe this day of remembrance by honoring our service members, veterans, and all American prisoners of war. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of April, in the year of our Lord two thousand ten, and of the Independence of the United States of America the two hundred and thirty-fourth.

A handwritten signature in black ink, appearing to be "Barack Obama", with a large circular flourish and a horizontal line extending to the right.

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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

#### 7 CFR Part 760

### Commodity Credit Corporation

#### 7 CFR Parts 1400, 1412, and 1421

RIN 0560-AH84

### Direct and Counter-Cyclical Program and Average Crop Revenue Election Program, Disaster Assistance Programs, Marketing Assistance Loans and Loan Deficiency Payments Program, Supplemental Revenue Assistance Payments Program, and Payment Limitation and Payment Eligibility; Clarifying Amendments

**AGENCY:** Commodity Credit Corporation and Farm Service Agency, USDA.

**ACTION:** Final rule.

**SUMMARY:** CCC is amending the regulations for the Direct and Counter-cyclical Payment Program (DCP) for the 2008 through 2012 crop years and Average Crop Revenue Election (ACRE) Program for the 2009 through 2012 crop years. The amendments clarify various provisions in the regulations and extend benefits to additional producers. This rule extends the eligibility for farms of less than 10 base acres from farms wholly owned by socially disadvantaged or limited resource producers to farms that are at least half owned by such producers. It removes a provision terminating base acres on Federally-owned land, which will effectively extend DCP and ACRE Program eligibility to producers who lease or purchase such land. Clarifying amendments specify the extended 2009 crop year enrollment and election period, simplify acreage and production reporting requirements, correct contract termination provisions, and add 2009 through 2012 loan rates. This rule also

makes several clarifying amendments to the regulations for the Emergency Assistance for Livestock, Honeybees, and Farm-Raised Fish Program (ELAP) and the Livestock Forage Disaster Program (LFP), the Supplemental Revenue Assistance Payments Program (SURE) and the Marketing Assistance Loans (MAL) and Loan Deficiency Payments (LDP) Programs. It clarifies eligibility requirements for foreign persons for CCC and FSA programs.

**DATES:** *Effective Date:* April 13, 2010.

#### FOR FURTHER INFORMATION CONTACT:

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#### SUPPLEMENTARY INFORMATION:

##### Background

This rule provides clarifying amendments to a number of regulations that were published to implement programs authorized by the Food, Conservation, and Energy Act of 2008 (Pub. L. 110-246, the "2008 Farm Bill"). The regulations that are amended with this rule specify provisions for the DCP, ACRE, ELAP, LFP, MAL, SURE, and LDP Programs.

Sections 1101 through 1109 of the 2008 Farm Bill specify the requirements for DCP and ACRE Program. CCC published regulations to implement the DCP and ACRE Program in the **Federal Register** on December 29, 2008 (73 FR 79284-79306). This rule amends the regulations for DCP for the 2008 through 2012 crop years and for the ACRE Program for the 2009 through 2012 crop years. CCC is amending the regulations to provide additional clarity and to increase flexibility in the regulatory requirements where the 2008 Farm Bill permits and where CCC has determined it is in the best interests of the programs and participants. The amendments include extending the enrollment period for the 2009 crop year, simplifying acreage and production reporting requirements, removing a provision

terminating base acres on Federally owned land, and setting less restrictive eligibility requirements for small farms owned by socially disadvantaged or limited resource producers. This rule also makes minor technical amendments and corrections, such as including loan rates that are specified in the 2008 Farm Bill, but were inadvertently not included in the regulations. The basic structure and scope of DCP and the ACRE Program are not changing with this rule.

#### Definitions; DCP and ACRE Program

This rule adds definitions to § 1412.3 that are needed to implement and clarify the ACRE Program. These definitions are already used in the forms and contracts for the program, as well as the instruction sheets and calculators on FSA's Web site. It is appropriate to put these definitions in the regulations so that producers have complete information about how their benefit is calculated. The definitions clarify how prices, production, revenue, acreage and expected yields will be determined for the ACRE Program.

This rule defines how the State ACRE guarantee is calculated for the purpose of determining ACRE Program benefits: It is 90 percent of the benchmark State yield per acre times the ACRE guarantee price. Although the term "ACRE guarantee price" is included in the contract appendix, prior to this amendment, it did not appear in the rule. Several other terms used in either the appendix to the contract or in the instructions for the ACRE calculator on the FSA Web site were not previously included in the rule. In order that the regulations may be more comprehensive, this rule adds the following definitions that are used in the forms, contracts, and online tools: "Actual farm yield and benchmark farm yield," "ACRE price," "ACRE plug yield," "average yield per planted acre," "actual farm production," and "actual farm revenue."

In other cases, a definition is needed to specify how a term used in other FSA or CCC programs is used differently for DCP and ACRE. For example, the definition of "double cropping" in this rule is slightly different from that used for other FSA programs. The definition in this rule clarifies what double crop production will be recognized for ACRE payment purposes. Other terms that

may be used in other FSA or CCC programs differently than for DCP and ACRE, and are therefore added in this rule, include "contract period," "initial crop," "planted and considered planted," and "replacement crop."

This rule removes a provision in § 1412.45 that terminates base acres on Federally owned land and prohibits the establishment of base acres on such land. It was determined that the termination of base acres on Federal land created an unintended adverse effect on farmers and ranchers who lease Federal farmland. This rule amends the regulations accordingly to reflect that determination. Not allowing base acres in these instances would for example, negatively impact family farms that were seized by the Army Corps of Engineers through eminent domain and then leased back to the family after flood control structures were installed. As required by the 2008 Farm Bill, it remains the case that the government agencies are not, however, eligible for farm payments.

This rule also amends provisions in §§ 1412.41 and 1412.72 concerning the enrollment period for the ACRE program. The changes reflect determinations made previously for the 2009 crop year that allowed additional time for the start-up of the program.

In addition, Section 1101 of the 2008 Farm Bill specifically prohibits DCP and ACRE program payments to producers on farms that have 10 or less total base acres of covered commodities or peanuts, beginning with the 2009 crop year, except for farms owned by socially disadvantaged or limited resource farmers. The current regulations specify in § 1412.51 that a producer on a farm with 10 or less base acres will not be eligible to receive DCP or ACRE program payments unless the farm is wholly owned by a socially disadvantaged farmer or rancher or a limited resource farmer or rancher. In other FSA programs, a 50 percent threshold has been used and FSA will use that same threshold in § 1412.51. The 2008 Farm Bill does not specify a threshold and the new standard should provide greater opportunities for socially disadvantaged or limited resource farmers to participate in DCP and ACRE.

Section 1412.53 includes the 2008 loan rates for covered commodities and peanuts and target prices for 2008 through 2012. That section is amended in this rule to remove the loan rate for extra long staple cotton, to incorporate the loan rates for 2008 dry peas, lentils, and large and small chick peas, and to incorporate loan rates for covered commodities and peanuts for the 2009

through 2012 crop years. These are technical corrections; extra long staple cotton is not a covered commodity, and the loan rates for 2009 to 2012 are specified in the 2008 Farm Bill but were inadvertently not included in the regulations in the December 29, 2008, final rule.

Section 1106 of the 2008 Farm Bill specifies that no penalty will be assessed against a producer unless it is determined that a producer knowingly and willingly falsified an acreage or production report. Accordingly, § 1412.61 is amended to add a paragraph that specifies if a violation was not a knowing and willing falsification, payments may still be made, based on determined acreage and production.

As a condition of payment eligibility, § 1412.66 requires the operator of a farm to accurately report acreage. Section 1412.66 also provides that farms enrolled in the Planting Transferability Pilot Project as specified in § 1412.48 and farms enrolled in the ACRE Program must submit an accurate report of production accompanied by documentation acceptable to CCC. Section 1412.66 is being amended to no longer require such extensive documentation in all cases, but only where CCC in its discretion requires such documentation of that kind. Producers will be able to certify production without accompanying documentation, unless CCC determines such documentation is necessary. This will lessen the burden on producers and only require additional documentation in cases where there is a particular need for documentation or where a spot check is being made. Producers are required by § 1412.67 to submit a notice of loss for both prevented planting and low yield losses, unless the loss has already been reported for the Noninsured Crop Disaster Assistance Program (NAP). Section 1412.67 is being amended to eliminate the notice of loss requirement for low yield losses and to require a notice of loss for prevented planting only if a notice of such a loss for NAP (also administered by FSA) has not already been filed. The regulations are also being amended to remove a requirement that crop acreage that will not be harvested must be left intact and appraised. The removal of this requirement will allow producers to provide zero production reports without an appraisal.

The amendments to §§ 1412.66 and 1412.67 will allow producers to certify production for both harvested and unharvested crop acreage without having to submit documentation, unless CCC, at its discretion, requests those

records. Prior to this change, acceptable production records (verifiable or reliable) were always required with the certification. These amendments are intended to lessen the burden on producers and on CCC. CCC has insufficient resources to appraise each case of lost or zero production. Reporting and verifying loss information that has already been reported for crop insurance or NAP does not contribute to program effectiveness or efficiency.

Section 1412.77, "Transfer of Land and Succession-in-Interest," specifies the requirements for transfers of land and successions-in-interest to ACRE Program contracts. This section is being amended to clarify that producers who obtain a share in a crop of covered commodities or peanuts through a transfer of land or a succession-in-interest are not automatically eligible for ACRE payment. To be eligible for the ACRE Program, either as initial share interests or as successors-in-interest, producers must sign an ACRE Program contract during the contract period. This rule also amends § 1412.73, "Sharing of ACRE Payments," to clarify that each producer on a farm must sign the ACRE Program contract for the farm to receive that producer's share of any potential payment. This rule does not change the requirement that once a farm has been enrolled in ACRE no one, even independent successors, can participate on that farm on a non-ACRE basis in DCP. Under ACRE, however, a portion of the direct DCP payments can be made as specified in the 2008 Farm Bill and in the regulations.

DCP and ACRE Program contracts are annual contracts. However, § 1412.78 specifies incorrectly that in the event that a contract is terminated for a violation, the terminated acreage remains ineligible for DCP and ACRE Program participation from the time of termination through the 2012 crop year. That is not correct. The period of ineligibility for violations of DCP or ACRE Program provisions cannot exceed the contract period. Accordingly, § 1412.78 is being corrected to specify that terminated acreage will be ineligible for DCP and ACRE Program participation from the time of termination until the end of the annual contract period in which the violation occurred. Once more, however, once a farm has a valid ACRE election the farm cannot participate on a non-ACRE basis in the DCP. Terminating an annual DCP or ACRE contract, for any reason, does not impact the ACRE election under § 1412.72.

### Disaster Assistance, Market Assistance Loans, and Loan Deficiency Payments Programs Clarifying Amendments

Sections 12033 and 15101 of the 2008 Farm Bill specify the requirements for LFP and ELAP. The final rules for LFP and ELAP as authorized by the 2008 Farm Bill were published in the **Federal Register** on September 11, 2009 (74 FR 46666–46683).

This rule also amends the regulations in 7 CFR part 760, subpart D, for LFP to clarify that eligible covered livestock are livestock that would normally be grazing in that county during the grazing period, rather than grazing on the exact day a drought began.

This rule makes clarifying amendments to the ELAP regulations in 7 CFR part 760, subpart C, to specify that producers are eligible for payments based on fair market value of lost fish or honeybees. These amendments are needed to clarify that producers who decide not to replace fish or honeybees are eligible for payment based on the fair market value of those losses, and do not need to provide documentation as to actual replacement cost. This change is consistent with other types of livestock loss payments as specified in other regulations in part 760, which provide payment based on fair market value, rather than documented actual replacement cost, and provide payment regardless of whether or not the lost livestock is replaced.

This rule also amends the ELAP regulations specifying acceptable documentation for the loss of honeybee colonies due to colony collapse disorder (CCD). The amendment allows documentation by an independent third party determined acceptable by FSA, or, for losses in 2008 and 2009, self-certification by the producer. The previous requirement for certification by a registered entomologist, Cooperative Extension Specialist, or Land Grant University is removed, because the exact cause of CCD cannot be identified and such experts may be unwilling or unable to certify when honeybee colony losses were specifically due to CCD. Also, changes in the regulations reflect that a payment may be made even if the lost bees are not replaced.

This rule also makes technical corrections to the regulations in 7 CFR part 1421 for Marketing Assistance Loans and Loan Deficiency Payments to correct language in several provisions to be consistent throughout the regulations. The MAL and LDP final rule as authorized by the 2008 Farm Bill were published in the **Federal Register** on April 7, 2009 (74 FR 15644–15657). This rule removes a reference to

“individual” and replaces it with a reference to “person,” to be consistent with the rest of the part. Flaxseed was referenced in two different paragraphs about determination of eligible commodity; the incorrect reference in § 1421.5 is removed with this rule. Other minor technical corrections include correcting typos and correcting a reference to authorized warehouses. Another technical change is an amendment to language in § 1421.104(a)(1) to remove language about mandatory lien searches. Such searches are for the purpose of protecting CCC’s interests only and need not be addressed in the regulations at all. Further, in the case of marketing loans for commodities stored in a commercial warehouse, CCC’s interest is usually protected by possession of the warehouse receipt. As amended the rule specifies simply that CCC may conduct lien searches and perfect a lien under State Law as it deems warranted to protect its own interests.

This rule also makes clarifying amendments and technical corrections to SURE. The final rule for SURE as authorized by the 2008 Farm Bill was published in the **Federal Register** on December 28, 2009 (74 FR 68480–68498) and implemented SURE in 7 CFR part 760, subpart G. Originally the implementation plans for SURE was to have a fully automated system; now the system will be manual. As a result, we have reconsidered the information available and how best to administer SURE. One of the key issues was weighting the counter-cyclical yield for comparison to the weighted adjusted APH yield and weighted adjusted NAP approved yield as applicable.

In § 760.638(c), we specify that the “counter-cyclical yield for a crop on a farm will be weighted based on total planted and prevented planted acres in the county for the current crop year.” In a fully automated system, we could have set it to automatically pull the information required for the calculation. However, in a manual system, it would be unnecessarily burdensome administratively. Therefore, to ease the administrative burden, we are revising the regulation to not specify how the counter-cyclical yield will be weighted and in the short run this may simply be based on the DCP base acres on the farms involved in the SURE farm. Under SURE, all of the producer’s normal (from an FSA administrative standpoint) “farms” (each of which may have a separate schedule of yields) are treated as one SURE “farm”—therefore requiring weighting. The 2008 Farm Bill does not specify precisely how these calculations will be made. The rule change improves

FSA’s ability to make timely payments to farmers in SURE, which is designed to counterbalance current market trends.

In the SURE final rule, a flowchart was published in the preamble showing the SURE calculations. We realize that in the rule portion we inadvertently left out a factor in the calculation. Therefore, we are correcting § 760.638(d)(2) to specify that in the case of crops that were waived in for NAP or RMA coverage the weighted counter-cyclical yield will be calculated as 65 percent of county expected yield or counter-cyclical yield.

### Eligibility of Foreign Persons Clarifying Amendment

This rule clarifies provisions that limit the eligibility of foreign persons for FSA and CCC program payments in 7 CFR part 1400. The regulations governing the eligibility of foreign persons for payments are being amended to conform with the specific statutory provisions providing for that limitation, as amended by the 2008 Farm Bill.

### Notice and Comment

These regulations are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553), as specified in section 1601(c) of the 2008 Farm Bill, which requires that the regulations be promulgated and administered without regard to the notice and comment provisions of section 553 of title 5 of the United States Code or the Statement of Policy of the Secretary of Agriculture effective July 24, 1971, (36 FR 13804) relating to notices of proposed rulemaking and public participation in rulemaking.

### Executive Order 12866

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866 and, therefore, OMB has not reviewed this final rule.

### Regulatory Flexibility Act

This rule is not subject to the Regulatory Flexibility Act since CCC and FSA are not required to publish a notice of proposed rulemaking for this rule.

### Environmental Review

The environmental impacts of this rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA regulations for compliance with NEPA (7 CFR part

799). FSA has determined that participation in acreage set-aside, acreage allotment, and other similar programs to those in 7 CFR 1412 will not significantly affect the quality of the human environment (7 CFR part 799.9(d)). Therefore no environmental assessment or environmental impact statement will be prepared.

#### Executive Order 12372

This program is not subject to Executive Order 12372, which requires consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published in the **Federal Register** on June 24, 1983 (48 FR 29115).

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988. This rule relaxes some previous requirements and contains no provisions that are retroactively more restrictive. It does not preempt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. Before any judicial action may be brought regarding the provisions of this rule the administrative appeal provisions of 7 CFR parts 11 and 780 must be exhausted.

#### Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

#### Executive Order 13175

The policies contained in this rule do not impose substantial unreimbursed direct compliance costs on Indian Tribal governments or have Tribal implications that preempt Tribal law.

#### Unfunded Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and Tribal government or the private sector. In addition, CCC was not required to publish a notice of proposed rulemaking for this rule. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

#### Federal Assistance Programs

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Direct and Counter-Cyclical Program, 10.055. ELAP, LFP, and SURE, 10.090. Commodity Loans and Loan Deficiency Payments, 10.051.

#### Paperwork Reduction Act

The regulations in this rule are exempt from the requirements of the Paperwork Reduction Act (44 U.S.C. Chapter 35), as specified in section 1601(c)(2) of the 2008 Farm Bill, which provides that these regulations be promulgated and administered without regard to the Paperwork Reduction Act.

#### E-Government Act Compliance

CCC is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### List of Subjects

##### 7 CFR Part 760

Dairy products, Indemnity payments, Pesticide and pests, Reporting and recordkeeping requirements.

##### 7 CFR Part 1400

Agriculture, Loan programs—agriculture, Conservation, Price support programs.

##### 7 CFR Part 1412

Cotton, Feed grains, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

##### 7 CFR Part 1421

Barley, Feed grains, Grains, Loan programs—agriculture, Oats, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses, Wheat.

■ For the reasons discussed above, this rule amends 7 CFR parts 760, 1400, 1412, and 1421 as follows:

#### PART 760—INDEMNITY PAYMENT PROGRAMS

■ 1. The authority citation for part 760 continues to read as follows:

**Authority:** 7 U.S.C. 4501, 7 U.S.C. 1531, 16 U.S.C. 3801, note, and 19 U.S.C. 2497; Title III, Pub. L. 109–234, 120 Stat. 474; Title IX, Pub. L. 110–28, 121 Stat. 211, and Sec. 748, Pub. L. 111–80, 123 Stat. 2131.

■ 2. Amend § 760.203 as follows:

■ a. In paragraph (h), third sentence, add the word “acceptable” before the word “documentation” and

■ b. In paragraph (h), remove the last sentence and add two sentences in its place to read as set forth below.

#### § 760.203 Eligible losses, adverse weather, and other loss conditions.

\* \* \* \* \*

(h) \* \* \* Except for 2008 and 2009 honeybee losses, acceptable documentation must include an acceptable colony collapse disorder certification by an independent third party as determined by the Deputy Administrator, plus any other documentation requested by FSA. For 2008 and 2009 honeybee losses such an independent certification is not required in all cases, but rather a self-certification by the honeybee producer as determined acceptable by the Deputy Administrator may be allowed in addition to whatever other documentation might be requested.

\* \* \* \* \*

■ 3. Revise § 760.206, paragraph (d), to read as follows:

#### § 760.206 Notice of loss and application process.

\* \* \* \* \*

(d) For the loss of honeybee colonies due to colony collapse disorder, the participant must also provide acceptable documentation or certification that the loss of the honeybee colony was due to colony collapse disorder. Except for 2008 and 2009 honeybee colony losses, acceptable documentation must include an independent third party certification determined acceptable by the Deputy Administrator, plus such additional information and documentation as may be requested. For 2008 and 2009 honeybee colony losses a self-certification may be accepted by FSA together with any additional information demanded by FSA as determined appropriate by the Deputy Administrator.

\* \* \* \* \*

■ 4. Revise § 760.210, paragraphs (b) and (c), to read as follows:

#### § 760.210 Honeybee payment calculations.

\* \* \* \* \*

(b) An eligible honeybee producer may receive payments for honeybee colony losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(h), based on 60 percent of the average fair market value for the number of honeybee colonies that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other



price data is approved for use by the Deputy Administrator, for losses in excess of normal honeybee mortality, as determined by the Deputy Administrator.

(c) An eligible honeybee producer may receive payments for honeybee hive losses due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(h), based on 60 percent of the average fair market value for the number of honeybee hives that were damaged or destroyed due to an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator.

\* \* \* \* \*

■ 5. Revise § 760.211, paragraph (b), to read as follows:

**§ 760.211 Farm-raised fish payment calculations.**

\* \* \* \* \*

(b) An eligible producer of farm-raised game or sport fish may receive payments for death losses of farm-raised fish due to an eligible adverse weather or eligible loss condition, as provided in § 760.203(i), based on 60 percent of the average fair market value of the game fish or sport fish that died as a direct result of an eligible adverse weather or eligible loss condition, as computed using nationwide prices unless some other price data is approved for use by the Deputy Administrator.

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**§ 760.304 [Amended]**

■ 6. Amend § 760.304 as follows:

■ a. In paragraph (a)(2), remove the words “on the beginning date” and add, in their place, the words “in the county”.  
■ b. In paragraph (a)(2)(i), remove the words “Of the qualifying drought during” and add, in their place, the word “During”.

■ 7. Revise § 760.638, paragraphs (c) and (d)(2), to read as follows:

**§ 760.638 Determination of SURE yield.**

\* \* \* \* \*

(c) The counter-cyclical yield for a crop on a SURE farm will be weighted in such manner as FSA deems fit taking into account a desire for a consistent system and FSA’s ability to make timely yield determinations.

(d) \* \* \*

(2) The SURE yield will be the higher of the yield calculated using the method in paragraph (d)(1) of this section or 65 percent of the weighted counter-cyclical yield as determined in paragraph (c) of this section.

\* \* \* \* \*

**PART 1400—PAYMENT LIMITATION AND PAYMENT ELIGIBILITY FOR 2009 AND SUBSEQUENT CROP, PROGRAM, OR FISCAL YEARS**

■ 8. The authority citation for part 1400 continues to read as follows:

**Authority:** 7 U.S.C. 1308, 1308–1, 1308–2, 1308–3, 1308–3a, 1308–4, and 1308–5.

■ 9. Amend § 1400.401 by revising paragraph (a) to read as follows:

**§ 1400.401 Eligibility**

(a) Subject to the conditions set out in paragraphs (b) and (c) of this section, any person who is not a citizen of the United States or an alien lawfully admitted into the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101–1778) will be ineligible to receive any type of loans or payments made available under Title I of the Food, Conservation, and Energy Act of 2008, the Agricultural Market Transition Act, the Commodity Credit Corporation Charter Act (15 U.S.C. 714–714o), or subtitle D of Title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3836), or under any contract entered into under Title XII of that Act (16 U.S.C. 3801–3845), with respect to any commodity produced, or land set aside from production, on a farm that is owned or operated by such person, unless such person is an individual who is providing land, capital, and a substantial amount of personal labor in the production of crops on such farm. Likewise, and subject to the same conditions, such persons may be ineligible for payments under any other program which by its own regulations specifically provides for such an ineligibility and adopts these regulations.

\* \* \* \* \*

**PART 1412—DIRECT AND COUNTER-CYCLICAL PROGRAM AND AVERAGE CROP REVENUE ELECTION PROGRAM FOR THE 2008 AND SUBSEQUENT CROP YEARS**

■ 10. The authority citation for part 1412 continues to read as follows:

**Authority:** 7 U.S.C. 7911–7918, 7951–7956, 8711–8719, 8751–8756, and 8781; and 15 U.S.C. 714b and 714c.

■ 11. Amend § 1412.3 by adding definitions, in alphabetical order, for “ACRE guarantee price,” “ACRE plug yield,” “ACRE price,” “Actual farm production,” “Actual farm revenue,” “Actual farm yield,” “Actual State yield,” “Actual State revenue,” “Actual yield per planted acre,” “Benchmark farm yield,” “Benchmark State yield,”

“Contract period,” “Double-cropping,” “Farm ACRE guarantee,” “Initial crop,” “Limited resource farmer,” “Medium grain rice,” “Minimum and maximum guarantee,” “National loan rate,” “Per acre producer-paid crop insurance premium,” “Planted acres for a State,” “Planted and considered planted (P&CP),” “Replacement crop,” “Reseeded or replanted crop,” “Socially disadvantaged farmer or rancher,” and “State ACRE guarantee,” to read as follows:

**§ 1412.3 Definitions.**

\* \* \* \* \*

*ACRE guarantee price* means the simple average, as determined by CCC, of the national average market prices of the covered commodity or peanuts for the most recent two crop years preceding the relevant current crop year. For example, for the 2009 program the relevant crop year is the 2009 crop year. Therefore, for the 2009 program, the ACRE guarantee price for the covered commodity or peanuts is equal to the simple average of the national average market prices of the covered commodity or peanuts for the 2007 and 2008 crops.

*ACRE plug yield* means the resulting yield determined by taking the applicable NASS county average yield for the covered commodity or peanuts, by practice if applicable, and multiplying it by 95 percent. The ACRE plug yield may be used by a farm in establishing an initial benchmark farm yield or reporting actual production in accordance with instructions issued by the Deputy Administrator. The ACRE plug yield is also used on a farm for a covered commodity or peanuts in a year where there are no acres of the covered commodity or peanuts planted. The ACRE plug yield may be found on the FSA Web site at: <http://www.fsa.usda.gov/dcp/> by clicking “ACRE County Yields.” ACRE plug yields are used in benchmark farm yields. If the National Agricultural Statistical Service (NASS) data is not available for a particular practice of a covered commodity or peanuts from which an ACRE plug yield can be established, the Deputy Administrator may establish an ACRE plug yield for the practice of the covered commodity or peanuts based a computation of multiplying 95 percent times the yield determined based on production data available from FSA farm records in the county, or in the event sufficient records do not exist, another data source determined appropriate by the Deputy Administrator.

*ACRE price* means the higher of the following, as determined by CCC, for the covered commodity or peanuts:

(1) The national average price received by producers during the 12-month marketing year (as defined in this part) for the relevant current crop of the covered commodity or peanuts (the relevant current crop for a program year is the corresponding crop for commodity for that year—for example, the current crop for the 2009 program is the 2009 crop), or

(2) 70 percent of the marketing assistance loan rate for the relevant current crop of the commodity under 7 U.S.C. 8731–8757.

*Actual farm production* means all of a farm's harvested and appraised production, including grazed acres, of a covered commodity or peanuts. Appraisals must be performed by appraisers acceptable to FSA. Appraisals performed according to the Non-Insured Crop Disaster Assistance Program (NAP) or crop insurance guidelines are generally deemed acceptable to FSA for DCP and ACRE Program purposes.

*Actual farm revenue* means the per acre amount computed by multiplying the actual farm yield, which is a per acre amount, of a covered commodity or peanuts times the ACRE price for the relevant current crop year. The relevant current crop year for these and other purposes is the crop year that corresponds to the calendar year in which the relevant program year ends. Therefore, for the 2009 contract or 2009 program, the relevant crop year would be the 2009 crop (that is, the crop considered to be the crop for the 2009 crop year).

*Actual farm yield* means for the relevant current crop year, the per acre amount determined by dividing the actual farm production of a covered commodity or peanuts by the farm's total planted and considered planted acres of the covered commodity or peanuts.

*Actual State yield* means the State's per acre amount for the relevant current crop year for a commodity determined by dividing the actual production in the State of the covered commodity or peanuts by the total planted acres of the covered commodity or peanuts in the State.

*Actual State revenue* means the per acre amount for a covered commodity or peanuts determined for the relevant current crop year by multiplying the actual State yield by the covered commodity or peanuts times the ACRE price.

*Average yield per planted acre* means the actual farm production of a covered

commodity or peanuts for a year divided by the farm's planted acres.

\* \* \* \* \*

*Benchmark farm yield* means, except as otherwise provided, a per acre yield for a covered commodity or peanuts computed using the Olympic average of the average yield per planted acre for the farm for the commodity for the 5 most recent crop years. The term "Olympic average" means that the highest and lowest per acre yields for the 5 years will be eliminated and the remaining annual entries will be averaged. CCC may make such adjustments as it deems necessary to create a fair yield for the farm so as to ensure the integrity of the ACRE Program. For purposes of determining a benchmark farm yield, yields on planted acres only will be considered except to the extent that the farm does not have a sufficient history to make a fair yield determination in which case a yield may be assigned by CCC.

*Benchmark State yield* means for a covered commodity or peanuts a per acre yield computed using the Olympic average of the average yield per planted acre for the State for the commodity for the 5 most recent crop years. To the extent practicable, it will be calculated using data from NASS. The benchmark State yield is used in determining the State ACRE guarantee. CCC may make such adjustments in these yields as it deems necessary to provide for a fair yield and to ensure the integrity of the program.

\* \* \* \* \*

*Contract period* means the compliance period set out for the contract for the particular program year. The program year is designated in item 1 of the contract. Contracts for different program years will be referenced by their program year. Thus, for example, a reference to the "2009 contract" means the contract for the 2009 program year and the relevant current crop for a program year is the corresponding crop for that commodity. Therefore, the relevant current crop for the 2009 program is, with respect to a particular commodity, the 2009 crop. References to the "contract" period refer to the compliance period for the particular program year. The compliance periods for the various program years are as follows:

(1) For the 2009 contract (and therefore for the 2009 program), the period that begins on October 1, 2008 and ends on September 30, 2009;

(2) For the 2010 contract, the period that begins on October 1, 2009 and ends on September 30, 2010;

(3) For the 2011 contract, the period that begins on October 1, 2010 and ends on September 30, 2011;

(4) For the 2012 contract, the period that begins on October 1, 2011 and ends on September 30, 2012.

\* \* \* \* \*

*Double-cropping* means for covered commodities and peanuts, notwithstanding the meaning in § 1412.47(e) for fruits and vegetables, the planting of a covered commodity or peanuts for harvest in a crop year, in cycle with another covered commodity or peanuts on the same acres for harvest in the same crop year in counties that have been determined to be areas where there is determined to be substantial, successful and long-term double cropping of the crop and where the producer has followed customary production techniques and planting deadlines as determined by CCC (that is, using techniques and deadlines used by the majority of farmers in the region to double crop the particular crops involved). In a county determined capable of supporting such double-cropping the covered commodities or peanuts, as determined by CCC, both an initial crop and a subsequent crop will be considered planted or prevented planted acres for the purpose of Subpart G of this part. Notwithstanding any of the provisions of § 718.103, in those instances where the subsequently planted or approved prevented planted covered commodity or peanuts cannot be recognized as double-cropped acreage under this definition, the subsequently planted covered commodity or peanuts will not be considered planted or prevented planted for any purpose.

\* \* \* \* \*

*Farm ACRE guarantee* means, for a crop year of a covered commodity or peanuts, the per acre producer-paid crop insurance premium (if any) added to the result of multiplying the benchmark farm yield, which is a per acre amount, times the ACRE guarantee price. The farm ACRE guarantee is used in determining whether a farm is eligible for ACRE payments for a covered commodity or peanuts.

\* \* \* \* \*

*Initial crop* means acreage of a covered commodity or peanuts planted or approved as prevented planted for harvest as peanuts, grain, or lint. The initial crop includes reseeded or replanted crop acreage.

*Limited resource farmer* means, as determined in accordance with § 1412.51, a farmer or rancher who meets both of the following criteria:

(1) The person did not have, counting both direct and indirect interests, total gross farm sales for all farms in which that person has an interest of not more than the triggering level in both of the two calendar years that precede the calendar year in which the contract year begins. The triggering level is an indexed number that was originally set at \$100,000. Beginning in October 2004, that number has been adjusted for inflation using the Prices Paid by the Farmer Index compiled by NASS. The triggering level for the DCP or ACRE contract will be the indexed number (see <http://www.lfptool.sc.egov.usda.gov/tool.asp>) as adjusted for the fiscal year that begins on the first day of the contract period.

(2) The person's total household income is at or below the national poverty level for a family of 4 or less than 50 percent of county median household income in each of the two most recent calendar years ending before the end of the program year, as CCC determines using U.S. Commerce Department Data.

\* \* \* \* \*

*Medium grain rice* means medium and short grain rice.

*Minimum and maximum guarantee* means, with respect to the State ACRE guarantee for each of the 2010 through 2012 crop years, the adjusted amounts that assure that the State ACRE guarantee for a program year for a covered commodity or peanuts will not decrease or increase more than 10 percent from the announced State ACRE guarantee for the preceding program year.

*National loan rate* means the loan rate established as specified in § 1421.9 of this chapter.

\* \* \* \* \*

*Per acre producer-paid crop insurance premium* means the insurance premiums paid by all producers of a farm for insurance on a covered commodity or peanuts, provided that at least some of the insured crop acreage is subject to a DCP contract and ACRE contract, divided by the total acres of the covered commodity or peanuts covered by the insurance; regardless of whether or not all of the acres insured are included on the farm's reported acreage for other programs, or are subject to a DCP contract and ACRE contract. Fees for catastrophic risk protection plan of insurance coverage or noninsured crop disaster assistance program coverage are not per acre producer-paid crop insurance premiums. Example: Producers A, B, and C have an interest in barley on a farm and the farm is enrolled in ACRE.

Producers A and B paid crop insurance premiums totaling \$800 on 100 insured barley acres. Regardless of how many acres of barley are planted, the per acre producer-paid crop insurance premium for barley is equal to \$8.

*Planted acres for a State* means for:

(1) Corn, sorghum, barley, oats, and wheat, the sum of harvested acres in a State, as reported by NASS and the sum of failed acres in a State, as reported by producers to FSA.

(2) All other crops, the sum of planted acres in a State, as reported by NASS.

(3) Crops where NASS data is not available, the planted acres as determined by CCC using other sources.

*Planted and considered planted (P&CP)* means, with respect to an acreage amount, the sum of the planted and prevented planted acres approved by the FSA county committee on the farm for a crop. For the purposes of this part, P&CP is limited to initially planted or prevented planted crop acreage, except for crops planted in an approved double-cropping sequence. Replacement crop acreage is not included as P&CP.

\* \* \* \* \*

*Replacement crop* means the planting or approved prevented planting of any crop for harvest following the failed planting or prevented planted acreage of a covered commodity or peanuts not in a recognized double-cropping sequence (as specified in this section).

Replacement crops that are covered commodities or peanuts are not eligible for planted and considered planted credit under this part and cannot generate payments under this part.

*Reseeded or replanted crop* means the second planting of a covered commodity or peanut crop on the same acreage after the first planting of that same crop has failed.

*Socially disadvantaged farmer or rancher* means a farmer or rancher who is a member of a socially disadvantaged group whose members have been subjected to racial or ethnic prejudice because of their identity as members of a group without regard to their individual qualities. Gender is not included as a covered group. Socially disadvantaged groups include the following and no others unless approved in writing by the Deputy Administrator:

- (1) American Indians or Alaskan Natives,
- (2) Asians or Asian-Americans,
- (3) Blacks or African-Americans,
- (4) Hispanics or Hispanic-Americans, and
- (5) Native Hawaiians or other Pacific Islanders.

*State ACRE guarantee* means the per acre amount for the crop which is 90

percent of the benchmark State yield times the ACRE guarantee price, subject to the minimum and maximum guarantee specified in these regulations.

\* \* \* \* \*

■ 12. Amend § 1412.41 as follows:

■ a. Revise paragraph (a)(1) and (a)(2)(i) to read as set forth below,

■ b. Amend paragraph (a)(3) by removing the words "on or before June 1" and adding, in their place, the words "by the date specified in paragraph (a)(2)(i) of this section", and

■ c. Amend paragraph (b), in the first sentence, by removing the words "on or before June 1 of the year of the contract" and adding, in their place, the words "by the enrollment date specified in paragraph (a)(2)(i) of this section".

**§ 1412.41 Direct and counter-cyclical program contract or ACRE program contract.**

(a) \* \* \*

(1) With respect to fiscal year 2008 payments, CCC will, through the date announced by CCC, entertain offers for DCP contracts by eligible producers of covered commodities and peanuts. With respect to fiscal year 2009 payments, CCC will entertain offers by eligible producers for an annual DCP or ACRE program contract through August 14, 2009. With respect to fiscal years 2010 through 2012 payments, CCC will annually allow offers for a DCP or ACRE program contract by eligible producers on a farm having base acres with respect to a covered commodity or peanuts, through June 1 of each such fiscal year.

(2)(i) Eligible producers must execute and submit a DCP or ACRE program contract and furnish supportive and necessary contractual documents to the county FSA office where the records for the program farm are administratively maintained not later than August 14, 2009, for 2009 fiscal year contracts and not later than June 1 of the applicable year for 2010 through 2012 fiscal year contracts.

\* \* \* \* \*

**§ 1412.45 [Amended]**

■ 13. Amend § 1412.45 by removing paragraph (d).

**§ 1412.51 [Amended]**

■ 14. Amend § 1412.51 as follows:

■ a. In paragraph (c), in the second sentence, remove the words "wholly-owned" and add, in their place, the words "at least 50 percent owned" and

■ b. In paragraph (c), in the third sentence, remove the words "each individual or entity with an interest in the entity must be a socially disadvantaged or limited resource farmer or rancher" and add, in their

place, the words “at least 50 percent of the ownership interest in the entity must be socially disadvantaged or limited resource farmers or ranchers”.

■ 15. Amend § 1412.53 as follows:

■ a. In paragraph (b)(1)(ii), remove the words “2008 crop year” and add, in their place, the words “2008 and 2009 crop years,”

■ b. Remove paragraph (b)(1)(ii)(G) and redesignate paragraphs (b)(1)(ii)(H) through (b)(1)(ii)(K) as paragraphs (b)(1)(ii)(G) through (b)(1)(ii)(J),

■ c. Redesignate paragraph (b)(1)(ii)(L) as paragraph (b)(1)(ii)(O),

■ d. Add paragraphs (b)(1)(ii)(K) through (b)(1)(ii)(N) to read as set forth below,

■ e. Add paragraph (b)(1)(iii) to read as set forth below,

**§ 1412.53 Counter-cyclical payment provisions.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) \* \* \*

(K) Dry Peas—\$5.40/cwt. (2009 crop only).

(L) Lentils—\$11.28/cwt. (2009 crop only).

(M) Small Chickpeas—\$7.43/cwt. (2009 crop only).

(N) Large Chickpeas—\$11.28/cwt. (2009 crop only).

\* \* \* \* \*

(iii) For the 2010 through 2012 crop years the following rates:

(A) Wheat—\$2.94/bu.

(B) Corn—\$1.95/bu.

(C) Grain sorghum—\$1.95/bu.

(D) Barley—\$1.95/bu.

(E) Oats—\$1.39/bu.

(F) Upland cotton—\$0.52/lb.

(G) Long grain rice—\$6.50/cwt.

(H) Medium grain rice—\$6.50/cwt.

(I) Soybeans—\$5.00/bu.

(J) Other oilseeds—\$10.09/cwt.

(K) Dry Peas—\$5.40/cwt.

(L) Lentils—\$11.28/cwt.

(M) Small Chickpeas—\$7.43/cwt.

(N) Large Chickpeas—\$11.28/cwt.

(O) Peanuts—\$355.00/ton.

\* \* \* \* \*

■ 16. Amend § 1412.61 as follows:

■ a. In paragraph (a), in the first sentence, remove the words “paragraph (b)” and add, in their place, the words “paragraphs (b) and (c)” and

■ b. Add paragraph (c) to read as set forth below.

**§ 1412.61 Contract violations.**

\* \* \* \* \*

(c) If there is a violation of § 1412.66 due to an inaccurate report of either acreage or production and CCC determines that the violation was not a

knowing and willing falsification or misrepresentation by producers on the contract under paragraph (a) of this section, payments may be made to the producers specified on the contract based on determined acreage and production.

**§ 1412.66 [Amended]**

■ 17. Amend § 1412.66 as follows:

■ a. In paragraph (b), first sentence, remove the word “Producers” at the beginning of the sentence and add, in its place, the words “As a condition of eligibility for payments under this part, producers”

■ b. In paragraph (b), second sentence, remove the word “The” at the beginning of the sentence and add, in its place, the words “At the discretion of CCC, the”.

■ 18. Amend § 1412.67 as follows:

■ a. Revise paragraphs (a) and (b) to read as set forth below,

■ b. In paragraph (c)(2), remove the words “damage or loss” and add, in their place, the words “prevented planting,” and

■ c. Remove paragraph (d).

**§ 1412.67 Notices of loss.**

(a) If a notice of loss for prevented planting under a policy or plan of insurance or pursuant to part 1437 of this chapter has not already been filed, at least one producer having a share of a crop intended to be planted pursuant to § 1412.48 or a having a share of a crop of a covered commodity or peanuts on a farm enrolled in the ACRE program must provide a notice of loss for prevented planting to CCC in the administrative FSA office for the farm, within 15 calendar days after the final planting date.

(b) For a prevented planting notice filed in accordance with this section, the notice of loss must include:

(1) Total acreage intended to be planted to the crop in the administrative county;

(2) Total acreage planted by the producer to the crop in the administrative county;

(3) Whether a purchase, delivery, or arrangement for purchase or delivery was made for seed, chemicals, fertilizer, *etc.*; and

(4) When land preparation measures, for example, cultivation, were completed, and what has been done or will be done with the acreage, for example, abandoned, replanted, *etc.*

\* \* \* \* \*

**§ 1412.72 [Amended]**

■ 19. Amend § 1412.72 as follows:

■ a. In paragraph (a), first sentence, remove the date “June 1 of 2009” and add, in its place, the date “August 14, 2009,”

■ b. In paragraph (d) introductory text, remove the words “June 1 of” at the end,

■ c. In paragraph (d)(1), add the words “August 14,” at the beginning,

■ d. Redesignate paragraphs (d)(2) through (d)(4) as paragraphs (d)(2)(i) through (d)(2)(iii),

■ e. Add new introductory text to paragraph (d)(2) to read as set forth below, and

■ f. In paragraph (h), remove the words “June 1” both times they appear and add, in their place, the words “August 14, 2009, for the 2009 election period and June 1 in each of the 2010, 2011, and 2012 fiscal years.”

**§ 1412.72 Availability and election of alternative approach.**

\* \* \* \* \*

(d) \* \* \*

(2) June 1 of:

\* \* \* \* \*

■ 20. Amend § 1412.73 by adding paragraphs (c) and (d) to read as follows:

**§ 1412.73 Sharing of ACRE payments.**

\* \* \* \* \*

(c) Shares of ACRE payments will be determined based on shares recorded on the report of acreage filed in accordance with § 1412.66. Each eligible producer having a share of covered commodities or peanuts planted or considered planted on a farm enrolled under an ACRE program contract must do both of the following to be eligible for their share of an ACRE payment:

(1) Unless otherwise already enrolled on the ACRE program contract with a share of base acres on the farm, sign the ACRE program contract during the contract period.

(2) Have the producer's share recorded on report of acreage filed in accordance with part 718 of this title and § 1412.66 of this part.

(d) In a case where a producer has failed to sign an ACRE program contract for the producer's reported share of covered commodities or peanuts planted or considered planted on a farm enrolled in accordance with this subpart, that producer's share will not receive any consideration for payment and will not generate any payment to the producer or to any other producer on the farm.

■ 21. Amend § 1412.77 as follows:

■ a. In paragraph (a), second sentence, add the word “program” between the words “ACRE” and “contract”, and

■ b. Add paragraph (f) to read as set forth below.

**§ 1412.77 Transfer of land and succession-in-interest.**

\* \* \* \* \*

(f) Producers who have reported a share interest on an acreage report of

covered commodities and peanuts planted or prevented from being planted on a farm are not automatically considered successors. In accordance with § 1412.73, such producers who have not already signed the ACRE program contract have until the end of the contract period to sign the ACRE program contract or that share will not receive payment consideration.

#### § 1412.78 [Amended]

■ 22. In § 1412.78, paragraph (a)(2)(iii), remove the date “2012” and add, in its place, the words “the end of the contract period”.

### PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES—MARKETING ASSISTANCE LOANS AND LOAN DEFICIENCY PAYMENTS FOR 2008 THROUGH 2012

■ 23. The authority citation for part 1421 continues to read as follows:

**Authority:** 7 U.S.C. 7231–7237 and 7931–7936; 15 U.S.C. 714b and 714c, and 7 U.S.C. 8731–8736.

#### § 1421.4 [Amended]

■ 24. Amend § 1421.4 as follows:

■ a. In paragraph (a)(1), first sentence, remove the words “an individual” and add, in their place, the words “a person” and

■ b. In paragraph (e)(1)(ii), remove the word “corporate” and add, in its place, the word “cooperate”.

#### § 1421.5 [Amended]

■ 25. Amend § 1421.5 as follows:

■ a. In paragraph (c)(4), first sentence, remove the word “respect” and add, in its place, the word “regard”, and

■ b. In paragraph (c)(5), first sentence, remove the word “flaxseed.”.

■ 26. Amend 1421.104 as follows:

■ a. Revise paragraph (a)(1) to read as set forth below and

■ b. In paragraph (a)(2) remove the words “paragraph (a)(1) of this section” and add, in their place, the words “this part”.

#### § 1421.104 Marketing assistance loan making.

(a)(1) CCC may conduct such lien searches, and may perfect its interest in loan commodities under State law, as it deems to be in its interest.

\* \* \* \* \*

#### § 1421.107 [Amended]

■ 27. Amend § 1421.107 as follows:

■ a. In paragraph (g)(1), remove the words “under the U.S. Warehouse Act”, and add, in their place, the words “by an authorized warehouse as specified in § 1421.103(c)(1)”, and

■ b. In paragraph (g)(2), remove the reference to “paragraph (f)(1) of this section” and add, in its place, a reference to “paragraph (g)(1) of this section.”

Signed in Washington, DC, on April 7, 2010.

**Carolyn B. Cooksie,**

*Acting Administrator, Farm Service Agency, and Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 2010–8308 Filed 4–13–10; 8:45 am]

**BILLING CODE 3410–05–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2007–28377; Directorate Identifier 2007–NM–063–AD; Amendment 39–16257; AD 2010–08–02]

**RIN 2120–AA64**

#### Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 and ERJ 190 Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Periodic operational check of the firewall hydraulic shutoff valves [FWSOV], made during routine maintenance, has revealed that the failure rate of that component is significantly higher than expected. Such a dormant failure, when combined with further possible failures, such as engine fire, may lead to an unacceptable reduction of safety margins.

The unsafe condition is failure of the firewall hydraulic shutoff valve, which, in combination with an engine fire, could result in the spread of an engine fire beyond the firewall. We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective May 19, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 19, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Kenny Kaulia, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2848; fax (425) 227–1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on June 26, 2008 (73 FR 36290). That supplemental NPRM proposed to correct an unsafe condition for the specified products.

Since that NPRM was issued, Agência Nacional de Aviação Civil (ANAC), which is the aviation authority for Brazil, has issued Brazilian Airworthiness Directives 2007–02–01R2, and 2007–02–02R2, both effective July 17, 2009. The revised MCAI references suitable hydraulic shutoff valves for replacement valves. (This change is explained further in a comment from EMBRAER, which is discussed below.) The MCAI states:

Periodic operational check of the firewall hydraulic shutoff valves [FWSOV], made during routine maintenance, has revealed that the failure rate of that component is significantly higher than expected. Such a dormant failure, when combined with further possible failures, such as engine fire, may lead to an unacceptable reduction of safety margins.

The unsafe condition is failure of the firewall hydraulic shutoff valve, which, in combination with an engine fire, could result in the spread of an engine fire beyond the firewall. The MCAI requires repetitive operational checks of the firewall hydraulic shutoff valve, and if necessary, replacement of the valve. You may obtain further information by examining the MCAI in the AD docket.

#### Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

#### Request To Revise Unsafe Condition Statement

EMBRAER requests that we revise the description of the unsafe condition.

EMBRAER explains that loss of hydraulic pressure, as stated in the supplemental NPRM, is an expected result when the firewall hydraulic shutoff valves fail to close when commanded to close. The failure mode for the valve results in the valve not closing when commanded to close. When the valve does not close, then a fire can spread beyond the firewall.

We agree to revise the unsafe condition statement to remove the phrase "loss of hydraulic pressure," and have revised the statements in the preamble and paragraph (e) of the AD accordingly.

#### **Request To Add an Optional Terminating Action**

EMBRAER also requests that we add replacing an affected valve with a new valve, P/N 975287-7, as an optional terminating action for the 600-flight-hour-interval inspections required by paragraph (f) of the supplemental NPRM. EMBRAER adds that a service bulletin to install this new valve should be issued soon.

We agree to add the replacement discussed by the commenter as an optional terminating action. We received new service bulletins, EMBRAER Service Bulletin 190-29-0021 and 170-29-0024, both dated December 22, 2008, that describe replacement instructions for the valves and explain that replacement with P/N 975287-7 returns the repetitive interval to the original 3,000 flight hours specified in the relevant maintenance review board report. We also received revised Brazilian ADs 2007-02-01R2 and 2007-02-02R2, both effective July 17, 2009, which provide for the use of other valves bearing a new part number in replacing faulty valves. We have added paragraph (f)(2) to this AD to provide an optional terminating action for the requirements of paragraph (f)(1) of this AD. We have also re-identified paragraph (f) of the supplemental NPRM as paragraph (f)(1) of this AD.

#### **Revision to Paragraph (f)(1) of This AD**

We have revised the language in paragraph (f)(1) of this AD from "If the valve does not operate properly, \* \* \*" to "If the valve fails the operational test," as described in the applicable service bulletin listed in Table 1 of this AD. This change more closely aligns with the phrasing used in the MCAI referenced in this AD.

#### **Explanation of Changes to Applicability**

We have revised the applicability of the supplemental NPRM to clarify affected airplane categories and identify model designations as published in the

most recent type certificate data sheet (TCDS) for the affected models. Since we issued the original NPRM, the Model ERJ 190-100 ECJ airplane was added to the U.S. TCDS. This model is also affected by the identified unsafe condition. There are no airplanes of this model currently registered in the United States.

#### **Conclusion**

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

#### **Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

#### **Explanation of Change to Costs of Compliance**

Since issuance of the supplemental NPRM, we have increased the labor rate used in the Costs of Compliance from \$80 per work-hour to \$85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

#### **Costs of Compliance**

We estimate that this AD will affect 145 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$12,325, or \$85 per product, per inspection cycle.

#### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII:

Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### **Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

#### **Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

#### **List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### **Adoption of the Amendment**

- Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**2010-08-02 Empresa Brasileira de Aeronautica S.A. (EMBRAER):** Amendment 39-16257. Docket No. FAA-2007-28377; Directorate Identifier 2007-NM-063-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective May 19, 2010.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ

170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes; and Model ERJ 190-100 STD, -100 LR, -100 IGW, -100 ECJ, -200 STD, -200 LR, and -200 IGW airplanes; certificated in any category; equipped with firewall hydraulic shutoff valves having part number (P/N) 975287-3 or P/N 975287-5.

#### Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

#### Reason

(e) The mandatory continuing airworthiness information (MCAI) states: Periodic operational check of the firewall hydraulic shutoff valves [FWSOV], made during routine maintenance, has revealed that the failure rate of that component is significantly higher than expected. Such a dormant failure, when combined with further possible failures, such as engine fire, may lead to an unacceptable reduction of safety margins.

The unsafe condition is failure of the firewall hydraulic shutoff valve, which, in combination with an engine fire, could result in the spread of an engine fire beyond the firewall. The MCAI requires repetitive

operational checks of the firewall hydraulic shutoff valve, and if necessary, replacement of the valve.

#### Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within the next 600 flight hours after the effective date of this AD, perform an operational test for proper operation of the firewall hydraulic shutoff valves P/N 975287-3 or P/N 975287-5, as applicable, in accordance with the applicable service bulletin listed in Table 1 of this AD. If the valve fails the operational test, as described in the applicable service bulletin listed in Table 1 of this AD, before further flight, replace the faulty hydraulic shutoff valve with another one bearing P/N 975287-3 or P/N 975287-5. Repeat the test thereafter at intervals that do not exceed 600 flight hours.

**Note 1:** For the purpose of this AD, an operational test is: "A task to determine that an item is fulfilling its intended purpose. The test does not require quantitative tolerances. This is a failure finding task."

TABLE 1—EMBRAER SERVICE INFORMATION

EMBRAER Service Bulletin—	Revision—	Dated—
170-29-0013 .....	Original .....	December 13, 2006.
170-29-0013 .....	01 .....	July 24, 2007.
190-29-0008 .....	Original .....	December 13, 2006.
190-29-0008 .....	01 .....	July 24, 2007.

(2) Replacing a firewall hydraulic shutoff valve having P/N 975287-3 or P/N 975287-5 with a valve having P/N 975287-7, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 190-29-0021 or 170-29-0024, both dated December 22, 2008, as applicable, terminates the requirements of paragraph (f)(1) of this AD for that valve.

#### FAA AD Differences

**Note 2:** This AD differs from the MCAI and/or service information as follows: A final solution has been identified since the MCAI were issued and we are providing it as an optional terminating action in this AD. This difference has been coordinated with Agência Nacional de Aviação Civil (ANAC).

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, ANM-116, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from

a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI Brazilian Airworthiness Directives 2007-02-01R2 and 2007-02-02R2, both effective July 17, 2009; and the service information listed in Table 2 of this AD; for related information.

TABLE 2—EMBRAER SERVICE INFORMATION

EMBRAER Service Bulletin—	Revision—	Dated—
170-29-0013 .....	Original .....	December 13, 2006.
170-29-0013 .....	01 .....	July 24, 2007.
170-29-0024 .....	Original .....	December 22, 2008.
190-29-0008 .....	Original .....	December 13, 2006.
190-29-0008 .....	01 .....	July 24, 2007.
190-29-0021 .....	Original .....	December 22, 2008.



**Material Incorporated by Reference**

(i) You must use the applicable service information specified in Table 3 of this AD to do the actions required by this AD, unless

the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use EMBRAER Service Bulletin 190–29–0021, dated December 22,

2008; or EMBRAER Service Bulletin 170–29–0024, dated December 22, 2008; as applicable; to perform those actions, unless the AD specifies otherwise.

**TABLE 3—MATERIAL INCORPORATED BY REFERENCE FOR ACTIONS REQUIRED BY THIS AD**

EMBRAER Service Bulletin—	Revision—	Dated—
170–29–0013 .....	Original .....	December 13, 2006.
170–29–0013 .....	01 .....	July 24, 2007.
190–29–0008 .....	Original .....	December 13, 2006.
190–29–0008 .....	01 .....	July 24, 2007.

EMBRAER Service Bulletin 170–29–0013, Revision 01, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1–5, 10	01 .....	July 24, 2007.
6–9 .....	Original ....	December 13, 2006.

EMBRAER Service Bulletin 190–29–0008, Revision 01, contains the following effective pages:

Page number	Revision level shown on page	Date shown on page
1–5, 10	01 .....	July 24, 2007.
6–9 .....	Original ....	December 13, 2006.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227–901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927–5852 or +55 12 3309–0732; fax: +55 12 3927–7546; e-mail: [distrib@embraer.com.br](mailto:distrib@embraer.com.br); Internet: <http://www.flyembraer.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on March 25, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010–7804 Filed 4–13–10; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

**[Docket No. FAA–2010–0391; Directorate Identifier 2010–NM–073–AD; Amendment 39–16263; AD 2010–08–08]**

**RIN 2120–AA64**

**Airworthiness Directives; Airbus Model A330–243, –341, –342, and –343 Airplanes Equipped with Rolls-Royce Trent 700 Engines**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a recent in-service event the flight crew of a Trent 700 powered A330 aircraft reported a temporary Engine Pressure Ratio (EPR) shortfall on engine 2 during the take-off phase of the flight. \* \* \*

Data analysis confirmed a temporary fuel flow restriction and subsequent recovery, and indicated that also engine 1 experienced a temporary fuel flow restriction shortly after the initial event on engine 2. \* \* \*

Based on previous industry-wide experience, the investigation of the event has focused on the possibility for ice to temporarily restrict the fuel flow. \* \* \*

\* \* \* \* \*

The scenario of ice being shed and causing a temporary blockage in the engine fuel system may lead to a temporary fuel flow restriction to the engine. This may result in a possible engine surge or stall condition, and in the engine not being able to provide the commanded thrust.

\* \* \* \* \*

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective April 29, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 29, 2010.

We must receive comments on this AD by June 1, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

• *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

• *Fax:* (202) 493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Examining the AD Docket**

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:**

Vladimir Ulyanov, Aerospace Engineer,



International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Emergency Airworthiness Directive 2010-0042-E, dated March 12, 2010 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

During a recent in-service event the flight crew of a Trent 700 powered A330 aircraft reported a temporary Engine Pressure Ratio (EPR) shortfall on engine 2 during the take-off phase of the flight. The ENG STALL warning was set. The flight crew followed the standard procedures which included reducing throttle to idle. The engine recovered and provided the demanded thrust level for the remainder of the flight.

Data analysis confirmed a temporary fuel flow restriction and subsequent recovery, and indicated that also engine 1 experienced a temporary fuel flow restriction shortly after the initial event on engine 2, again followed by a full recovery. The engine 1 EPR shortfall was insufficient to trigger any associated warning and was only noted through analysis of the flight data. No flight crew action was necessary to recover normal performance on this engine. The remainder of the flight was uneventful.

Based on previous industry-wide experience, the investigation of the event has focused on the possibility for ice to temporarily restrict the fuel flow. While no direct fuel system fault has been identified, the operation of the water scavenge system at Rib 3 cannot be excluded as being a contributory factor.

Testing and analysis are continuing to identify the root cause of the event.

The scenario of ice being shed and causing a temporary blockage in the engine fuel system may lead to a temporary fuel flow restriction to the engine. This may result in a possible engine surge or stall condition, and in the engine not being able to provide the commanded thrust.

Therefore, as a precautionary measure to reduce the possibility of ingesting ice into the engine fuel feed system, this AD requires to:

- Deactivate the automatic Standby Fuel Pump Scavenge System, which operates during Taxi and Take-off by removing relays Functional Item Numbers (FIN) 80QA1 and 80QA2 (this will not affect normal standby pump operation) for aeroplanes identified in the applicability section of this AD and on which this deactivation has not been performed in production through the modification 200801, and
- Prohibit the dispatch with \* \* \* [a] MAIN Fuel Pump inoperative on all aeroplanes identified in the applicability section of this AD.

This AD also requires revising the Limitations section of the airplane flight manual to advise the flight crew of the dispatch prohibition. You may obtain further information by examining the MCAI in the AD docket.

##### Relevant Service Information

Airbus has issued All Operators Telex A330-28A3114, Revision 1, dated March 24, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

##### FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

##### Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

##### FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because ice being shed and causing a temporary blockage in the engine fuel system could lead to a temporary fuel flow restriction to the engine, which could result in a possible engine surge or stall condition, and in the engine not being able to provide the commanded thrust. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists

for making this amendment effective in fewer than 30 days.

##### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2010-0391; Directorate Identifier 2010-NM-073-AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

##### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

##### Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a “significant regulatory action” under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2010-08-08 Airbus:** Amendment 39-16263. Docket No. FAA-2010-0391; Directorate Identifier 2010-NM-073-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 29, 2010.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Airbus Model A330-243, -341, -342, and -343 airplanes, certificated in any category, all manufacturer serial numbers equipped with Rolls-Royce Trent 700 engines, on which Airbus modification 56966MP16199 has been embodied in production or Airbus Service Bulletin A330-28-3105 has been embodied in service.

#### Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

#### Reason

(e) The mandatory continued airworthiness information (MCAI) states:

During a recent in-service event the flight crew of a Trent 700 powered A330 aircraft reported a temporary Engine Pressure Ratio (EPR) shortfall on engine 2 during the take-off phase of the flight. The ENG STALL warning was set. The flight crew followed the standard procedures which included reducing throttle to idle. The engine recovered and provided the demanded thrust level for the remainder of the flight.

Data analysis confirmed a temporary fuel flow restriction and subsequent recovery, and indicated that also engine 1 experienced a temporary fuel flow restriction shortly after the initial event on engine 2, again followed by a full recovery. The engine 1 EPR shortfall was insufficient to trigger any associated warning and was only noted through analysis of the flight data. No flight crew action was necessary to recover normal performance on this engine. The remainder of the flight was uneventful.

Based on previous industry-wide experience, the investigation of the event has focused on the possibility for ice to temporarily restrict the fuel flow. While no direct fuel system fault has been identified, the operation of the water scavenge system at Rib 3 cannot be excluded as being a contributory factor.

Testing and analysis are continuing to identify the root cause of the event.

The scenario of ice being shed and causing a temporary blockage in the engine fuel system may lead to a temporary fuel flow restriction to the engine. This may result in a possible engine surge or stall condition, and in the engine not being able to provide the commanded thrust.

Therefore, as a precautionary measure to reduce the possibility of ingesting ice into the engine fuel feed system, this AD requires to:

- Deactivate the automatic Standby Fuel Pump Scavenge System, which operates during Taxi and Take-off by removing relays Functional Item Numbers (FIN) 80QA1 and 80QA2 (this will not affect normal standby pump operation) for aeroplanes identified in the applicability section of this AD and on which this deactivation has not been performed in production through the modification 200801, and
- Prohibit the dispatch with \* \* \* [a] MAIN Fuel Pump inoperative on all aeroplanes identified in the applicability section of this AD.

This AD also requires revising the Limitations section of the airplane flight manual to advise the flight crew of the dispatch prohibition.

#### Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Actions

(g) For airplanes on which Airbus modification 200801 has not been embodied in production as of the effective date of this AD: Within 10 days after the effective date of this AD, deactivate the water scavenge automatic operation by removing relays FIN 80QA1 (left-hand) and 80QA2 (right-hand), in accordance with the instructions in Airbus All Operators Telex A330-28A3114, Revision 1, dated March 24, 2010.

(h) Deactivation before the effective date of this AD in accordance with Airbus All Operators Telex A330-28A3114, dated March 10, 2010, is considered acceptable for compliance with the corresponding action required by paragraph (g) of this AD.

(i) For airplanes on which Airbus modification 200801 has not been embodied

in production as of the effective date of this AD: Before further flight after accomplishment of the requirements of paragraph (g) of this AD, dispatch of an airplane with any inoperative main fuel pump is prohibited.

(j) For airplanes on which Airbus modification 200801 has been embodied in production as of the effective date of this AD: Dispatch of an airplane with any inoperative main fuel pump is prohibited as of the effective date of this AD.

(k) For all airplanes: At the applicable time specified in paragraph (k)(1) or (k)(2) of this AD, revise the Limitations section of the airplane flight manual (AFM) to include the following statement. This may be done by inserting a copy of this AD into the AFM.

"Dispatch with any inoperative main fuel pump is prohibited."

(1) For airplanes on which Airbus modification 200801 has not been embodied in production as of the effective date of this AD: Revise the AFM before further flight after accomplishment of the requirements of paragraph (g) of this AD.

(2) For airplanes on which Airbus modification 200801 has been embodied in production as of the effective date of this AD: Revise the AFM before further flight after the effective date of this AD.

**Note 1:** When a statement identical to that in paragraph (k) of this AD has been included in the general revisions of the AFM, the general revisions may be inserted into the AFM, and the copy of this AD may be removed from the AFM.

#### FAA AD Differences

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically refer to this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(m) Refer to MCAI European Aviation Safety Agency (EASA) Emergency Airworthiness Directive 2010-0042-E, dated March 12, 2010; and Airbus All Operators Telex A330-28A3114, Revision 1, dated March 24, 2010; for related information.

#### Material Incorporated by Reference

(n) You must use Airbus All Operators Telex A330-28A3114, Revision 1, dated March 24, 2010, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. (The document number, revision level, and date of this document are indicated only on the first page of the document; no other page of the document contains this information.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on April 1, 2010.

**Ali Bahrami,**

Manager, Transport Airplane Directorate,  
Aircraft Certification Service.

[FR Doc. 2010-8181 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2009-1108; Directorate Identifier 2009-NM-131-AD; Amendment 39-16260; AD 2010-08-05]**

**RIN 2120-AA64**

#### **Airworthiness Directives; Airbus Model A330-200, A330-300, and A340-300 Series Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It was noticed in production that in the area between frame (FR) C53.9 and FR C55 RH [right-hand], the distance between the route 9R of the In-Flight Entertainment system and the wire harness for the Lower Deck-Mobile Crew Rest system provisions is too small.

This limited distance may cause chafing between the affected electrical harness 6581VB and the harness 5495VB or 6938VB.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

\* \* \* \* \*

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective May 19, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 19, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton,

Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 1, 2009 (74 FR 62711). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It was noticed in production that in the area between frame (FR) C53.9 and FR C55 RH [right-hand], the distance between the route 9R of the In-Flight Entertainment system and the wire harness for the Lower Deck-Mobile Crew Rest system provisions is too small.

This limited distance may cause chafing between the affected electrical harness 6581VB and the harness 5495VB or 6938VB.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, this AD requires the installation of a stirrup on the terminal block 5507VT between FR53.9 and FR54, and the re-routing of the wiring route 9R.

You may obtain further information by examining the MCAI in the AD docket.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

##### **Support for the NPRM**

Northwest Airlines states that it has reviewed the NPRM and supports the action.

##### **Request To Correct Paragraph Identifier**

Airbus requests that we correct the paragraph identifiers specified in the applicability statement of the NPRM, changing “\* \* \* paragraphs (c)(1)(i) and (c)(1)(ii) \* \* \*” of the NPRM to “\* \* \* paragraphs (c)(1) and (c)(2) \* \* \*” in this final rule.

We have corrected the paragraph identifiers in this final rule.

##### **Request To Clarify the Proposed Applicability**

Airbus requests that we clarify the applicability in paragraph (c)(ii)(A) of the NPRM (now paragraph (c)(2)(i) of this final rule), to specify the Model A330 airplanes.

We agree to clarify the applicability. We have clarified the applicability statement from “For all models, except

Model A340–311, A340–312, and A340–313 airplanes,” to “For Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes” in this final rule.

### Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

### Explanation of Change to Costs of Compliance

After the NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from \$80 per work hour to \$85 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

### Costs of Compliance

We estimate that this AD will affect 43 products of U.S. registry. We also estimate that it will take about 3 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Required parts will cost about \$66 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these parts. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD

to the U.S. operators to be \$13,803, or \$321 per product.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a “significant regulatory action” under Executive Order 12866;
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2010–08–05 Airbus:** Amendment 39–16260. Docket No. FAA–2009–1108; Directorate Identifier 2009–NM–131–AD.

### Effective Date

(a) This airworthiness directive (AD) becomes effective May 19, 2010.

### Affected ADs

(b) None.

### Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Airbus Model A340–311, –312, and –313 airplanes; certificated in any category; all manufacturer serial numbers; modified in production by modifications identified in both paragraphs (c)(1) and (c)(2) of this AD; excluding those on which Airbus Modification 57744 has been embodied in production.

(1) Airbus Modification 40379; and

(2) One of the following Airbus modifications, as applicable:

(i) For Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes: Modification 49894, 51304, 52048, 52712, 53559, 53732, 54115, 55632, or 55722.

(ii) For Model A340–311, A340–312, and A340–313 airplanes: Modification 51603, 53400, or 55024.

### Subject

(d) Air Transport Association (ATA) of America Code 92.

### Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It was noticed in production that in the area between frame (FR) C53.9 and FR C55 RH [right-hand], the distance between the route 9R of the In-Flight Entertainment system and the wire harness for the Lower Deck-Mobile Crew Rest system provisions is too small.

This limited distance may cause chafing between the affected electrical harness 6581VB and the harness 5495VB or 6938VB.

This condition, if not corrected, could lead to the short circuit of wires dedicated to oxygen, which, in case of emergency, could result in a large number of passenger oxygen masks not being supplied with oxygen, possibly causing personal injuries.

For the reasons described above, this AD requires the installation of a stirrup on the terminal block 5507VT between FR53.9 and FR54, and the re-routing of the wiring route 9R.

#### Actions and Compliance

(f) Within 24 months after the effective date of this AD, unless already done: Install a stirrup on the terminal block 5507VT between FR53.9 and FR54 and modify the wiring route 9R in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330-92-3080, dated November 12, 2008; or Airbus Mandatory Service Bulletin A340-92-4080, dated November 12, 2008; as applicable.

#### FAA AD Differences

**Note 1:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2009-0076, dated April 6, 2009; Airbus Mandatory Service Bulletin A330-92-3080, dated November 12, 2008; and Airbus Mandatory

Service Bulletin A340-92-4080, dated November 12, 2008; for related information.

#### Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A330-92-3080, dated November 12, 2008; or Airbus Mandatory Service Bulletin A340-92-4080, dated November 12, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail: [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on April 1, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010-8182 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

**[Docket No. FAA-2009-1231; Directorate Identifier 2009-NM-212-AD; Amendment 39-16261; AD 2010-08-06]**

**RIN 2120-AA64**

**Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170 Airplanes; and Model ERJ 190-100 STD, -100 LR, -100 IGW, -200 STD, -200 LR, and -200 IGW Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI)

originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found the possibility of missing points of sealant application on the vapor barrier assembly in the wing stub rear box. In the event of fuel tank leak in this region associated with an unsealed vapor barrier assembly, migration of flammable vapors and fluids to middle electronic bay may occur, which then could lead to an uncontained fire event if the flammable vapors finds an ignition source.

\* \* \* \* \*

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective May 19, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 19, 2010.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

#### FOR FURTHER INFORMATION CONTACT:

Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 5, 2010 (75 FR 260). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

It has been found the possibility of missing points of sealant application on the vapor barrier assembly in the wing stub rear box. In the event of fuel tank leak in this region associated with an unsealed vapor barrier assembly, migration of flammable vapors and fluids to middle electronic bay may occur, which then could lead to an uncontained fire event if the flammable vapors finds an ignition source.

\* \* \* \* \*

The required actions include a detailed inspection for gaps, voids, or holes in the sealant. Corrective actions include applying sealant into any gaps, voids, or holes. You may obtain further

information by examining the MCAI in the AD docket.

### Comments

We gave the public the opportunity to participate in developing this AD. We considered the single comment received.

### Request To Change Paragraph Reference

The manufacturer, EMBRAER, requests that we revise paragraph (g)(3) of the NPRM to refer to the inspection specified in paragraph (g)(1) of the NPRM rather than paragraph (f)(1) as stated in the NPRM, because the inspection is required by paragraph (g)(1) of the NPRM.

We agree to revise paragraph (g)(3) of the AD to refer to paragraph (g)(1) of the AD. Paragraph (f)(1) of this AD does not exist and paragraph (f) has no inspection requirement; paragraph (g)(1) of this AD contains the AD's only inspection requirement. We have changed paragraph (g)(3) of the AD accordingly.

### Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the change described previously. We determined that this change will not increase the economic burden on any operator or increase the scope of the AD.

### Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

### Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from \$80 per work-hour to \$85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

### Costs of Compliance

We estimate that this AD will affect about 197 products of U.S. registry. We also estimate that it will take about 5 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$83,725, or \$425 per product.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket

contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

**2010-08-06 Empresa Brasileira de Aeronautica S.A. (EMBRAER):**  
Amendment 39-16261. Docket No. FAA-2009-1231; Directorate Identifier 2009-NM-212-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective May 19, 2010.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD; certificated in any category.

(1) Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes, serial numbers 17000002, 17000004 through 17000013 inclusive, and 17000015 through 17000235 inclusive.

(2) Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 190-100 STD, -100 LR, -100 IGW, -200 STD, -200 LR, and -200 IGW airplanes, serial numbers 19000002, 19000004, 19000006 through 19000108 inclusive, 19000110 through 19000139 inclusive, 19000141 through 19000158 inclusive, 19000160 through 19000176 inclusive, 19000178 through 19000202 inclusive, 19000204 through 19000213 inclusive, and 19000215.

#### Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

#### Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

It has been found the possibility of missing points of sealant application on the vapor

barrier assembly in the wing stub rear box. In the event of fuel tank leak in this region associated with an unsealed vapor barrier assembly, migration of flammable vapors and fluids to middle electronic bay may occur, which then could lead to an uncontained fire event if the flammable vapors finds an ignition source.

\* \* \* \* \*

The required actions include a detailed inspection for gaps, voids, or holes in the sealant. Corrective actions include applying sealant into any gaps, voids, or holes.

#### Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

#### Actions

(g) Unless already done, do the following actions.

(1) Within 6,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, do a detailed inspection of the vapor barrier assembly in the wing stub rear box for missing sealant which forms gaps, voids or holes, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170-57-0036, dated March 13, 2009 (for Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes); or EMBRAER Service Bulletin 190-57-0027, dated March 18, 2009 (for Model ERJ 190-100 STD, -100 LR, -100 IGW, -200 STD, -200 LR, and -200 IGW airplanes).

**Note 1:** For the purposes of this AD, a detailed inspection is: "An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate access procedures may be required."

(2) If the vapor barrier sealant is found to be correctly applied in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170-57-0036, dated March 13, 2009 (for Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes); or EMBRAER Service Bulletin 190-57-0027, dated March 18, 2009 (for Model ERJ 190-100 STD, -100 LR, -100 IGW, -200 STD, -200 LR, and -200 IGW airplanes); no further action is required by this AD.

(3) If any vapor barrier sealant is found missing (gaps, voids or holes) during the inspection required by paragraph (g)(1) of this AD, before further flight apply sealant into the applicable gaps, voids, and holes, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 170-57-0036, dated March 13, 2009 (for Model ERJ 170-100 LR, -100 STD, -100 SE, -100 SU, -200 LR, -200 STD, and -200 SU airplanes); or EMBRAER Service Bulletin 190-57-0027, dated March 18, 2009 (for Model ERJ 190-100 STD, -100 LR, -100 IGW, -200 STD, -200 LR, and -200 IGW airplanes).

#### FAA AD Differences

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Kenny Kaulia, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2848; fax (425) 227-1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(i) Refer to MCAI Brazilian Airworthiness Directives 2009-07-01 and 2009-07-02, both effective July 13, 2009; EMBRAER Service Bulletin 170-57-0036, dated March 13, 2009; and EMBRAER Service Bulletin 190-57-0027, dated March 18, 2009; for related information.

#### Material Incorporated by Reference

(j) You must use EMBRAER Service Bulletin 170-57-0036, dated March 13, 2009; or EMBRAER Service Bulletin 190-57-0027, dated March 18, 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), Technical Publications Section (PC 060), Av. Brigadeiro Faria Lima, 2170—Putim—12227-901 São Jose dos Campos—SP—BRASIL; telephone: +55 12 3927-5852 or +55 12 3309-0732; fax: +55 12 3927-7546; e-mail: [distrib@embraer.com.br](mailto:distrib@embraer.com.br); Internet: <http://www.flyembraer.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on April 1, 2010.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010-8184 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2009-1068; Directorate Identifier 2009-NM-042-AD; Amendment 39-16258; AD 2010-08-03]

**RIN 2120-AA64**

#### Airworthiness Directives; Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

The heating capability of several Angle Of Attack (AOA) transducer heating elements removed from in-service aircraft have been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

\* \* \* \* \*

The unsafe condition is reduced controllability of the airplane. We are issuing this AD to require actions to



correct the unsafe condition on these products.

**DATES:** This AD becomes effective May 19, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of May 19, 2010.

The Director of the Federal Register previously approved the incorporation by reference of a certain publication listed in this AD as of March 9, 2009 (74 FR 7789, February 20, 2009).

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:**

Wing Chan, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7311; fax (516) 794-5531.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on November 18, 2009 (74 FR 59480), and proposed to supersede AD 2009-04-11, Amendment 39-15817 (74 FR 7789, February 20, 2009). That NPRM proposed to correct an unsafe condition for the specified products.

The mandatory continued airworthiness information (MCAI) states:

The heating capability of several Angle Of Attack (AOA) transducer heating elements removed from in-service aircraft have been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

This [Canadian] directive mandates a periodic inspection of the inrush current to verify the AOA heating capability and replacement of the inaccurately calibrated AOA transducers.

The unsafe condition is reduced controllability of the airplane. This AD retains the requirements of AD 2009-04-11 and also requires a one-time

inspection of certain angle of attack (AOA) transducers, replacement of transducers having certain serial numbers, repetitive inspections of the inrush current for certain AOA transducers, and replacement of inaccurately calibrated AOA transducers. You may obtain further information by examining the MCAI in the AD docket.

**Comments**

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

**Request To Allow Records Check**

Mesa Airlines requests that we allow the use of a records check in lieu of the inspection for serial numbers specified in paragraph (g)(2) of the NPRM. Mesa Airlines points out that serial numbers could already be known to operators after compliance with AD 2009-04-11. Mesa Airlines also notes that AOA transducers are delicate instruments that could be damaged by removal for the purpose of confirming serial numbers.

For the reasons provided by Mesa Airlines, we agree to allow operators to perform a review of the airplane maintenance records in lieu of performing an inspection of the AOA transducer to determine the serial number, if the serial number can be conclusively determined from that review. We have revised paragraph (g)(2) of this AD accordingly.

**Explanation of Change to Applicability**

We have revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

**Conclusion**

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

**Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information

provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

**Explanation of Change to Costs of Compliance**

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from \$80 per work-hour to \$85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

**Costs of Compliance**

We estimate that this AD will affect about 613 products of U.S. registry.

The actions that are required by AD 2009-04-11 and retained in this AD take about 1 work-hour per product, at an average labor rate of \$85 per work-hour. Based on these figures, the estimated cost of the currently required actions is \$85 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is \$85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$52,105, or \$85 per product.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States,



or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by removing Amendment 39-15817 (74 FR 7789, February 20, 2009) and adding the following new AD:

**2010-08-03 Bombardier, Inc:** Amendment 39-16258. Docket No. FAA-2009-1068; Directorate Identifier 2009-NM-042-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective May 19, 2010.

#### Affected ADs

(b) This AD supersedes AD 2009-04-11, Amendment 39-15817.

#### Applicability

(c) This AD applies to Bombardier, Inc. Model CL-600-2B19 (Regional Jet Series 100 & 440) airplanes, serial numbers 7003 and subsequent, certificated in any category, that are equipped with Thales angle of attack (AOA) transducers having part number (P/N) 45150340 or C16258AA.

#### Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

#### Reason

(e) The mandatory continued airworthiness information (MCAI) states:

The heating capability of several Angle Of Attack (AOA) transducer heating elements removed from in-service aircraft have been found to be below the minimum requirement. Also, it was discovered that a large number of AOA transducers repaired in an approved

maintenance facility were not calibrated accurately.

Inaccurate calibration of the AOA transducer and/or degraded AOA transducer heating elements can result in early or late activation of the stall warning, stick shaker and stick pusher by the Stall Protection Computer (SPC).

This [Canadian] directive mandates a periodic inspection of the inrush current to verify the AOA heating capability and replacement of the inaccurately calibrated AOA transducers.

The unsafe condition is reduced controllability of the airplane. This AD retains the requirements of AD 2009-04-11 and also requires a one-time inspection of certain AOA transducers, replacement of transducers having certain serial numbers, repetitive inspections of the inrush current for certain AOA transducers, and replacement of inaccurately calibrated AOA transducers.

#### Restatement of Requirements of AD 2009-04-11, With No Changes

(f) Unless already done, do the following actions:

(1) For airplanes equipped with a transducer having accumulated more than 7,500 total flight hours as of March 9, 2009 (the effective date of AD 2009-04-11): Within 250 flight hours after March 9, 2009, measure the inrush current of both AOA transducers in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008.

(i) If both AOA transducers are found to have an inrush current of 1.60 amps or more, repeat the measurement thereafter at intervals not to exceed the applicable interval specified in Table 1 of this AD. Do the measurement in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008.

TABLE 1—REPETITIVE MEASUREMENT INTERVALS

If the last inrush current measurement of the serviceable AOA transducer is—	Then repeat the measurement—
More than or equal to 1.90 amps .....	Within 2,000 flight hours after the last measurement.
More than or equal to 1.80 amps but less than 1.90 amps .....	Within 1,500 flight hours after the last measurement.
More than or equal to 1.70 amps but less than 1.80 amps .....	Within 1,000 flight hours after the last measurement.
More than or equal to 1.60 amps but less than 1.70 amps .....	Within 500 flight hours after the last measurement.

(ii) If one AOA transducer is found to have an inrush current below 1.60 amps, and the other AOA transducer is found to have an inrush current of 1.60 amps or more: Do the actions required by paragraphs (f)(1)(ii)(A) and (f)(1)(ii)(B) of this AD.

(A) For the AOA transducer having an inrush current of 1.60 amps or more: Repeat the measurement thereafter at intervals not to exceed the applicable interval specified in Table 1 of this AD. Do the measurement in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008.

(B) For the AOA transducer having an inrush current below 1.60 amps ("degraded" transducer): Within 1,000 flight hours after March 9, 2009, replace that transducer in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008. At the applicable time specified in Table 1 of this AD if the degraded transducer was replaced with a serviceable transducer, or within 2,000 flight hours after replacement if the degraded transducer was replaced with a new transducer, do the measurement for that replacement transducer and repeat the

measurements thereafter at intervals not to exceed the applicable interval specified in Table 1 of this AD. Do the measurement in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008.

(iii) If both AOA transducers are found to have an inrush current below 1.60 amps, do the action specified in paragraph (f)(1)(iii)(A) or (f)(1)(iii)(B) of this AD.

(A) Before further flight, replace one of the degraded AOA transducers with a new or serviceable transducer; and replace the other degraded transducer with a new or

serviceable transducer within 1,000 flight hours after the measurement required by paragraph (f)(1) of this AD; in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008. At the applicable time specified in Table 1 of this AD, if the degraded transducer was replaced with a serviceable transducer; or within 2,000 flight hours after replacement if the degraded transducer was replaced with a new transducer: Do the measurement for that replacement transducer and repeat the measurement thereafter at intervals not to exceed the applicable interval specified in Table 1 of this AD. Do the measurements in accordance with Part A of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008.

(B) Within 1,000 flight hours after the measurement required by paragraph (f) of this AD, replace both degraded AOA transducers with new or serviceable transducers in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008. Until the replacement is done, dispatch with two degraded AOA transducers is allowed, provided that the applicable Limitations section of the airplane flight manual (AFM) is revised to include the following statement or a copy of this AD is inserted into the applicable Limitations section of the AFM.

"Dispatch is allowed if:

(a) Operations are not conducted in visible moisture (including standing water and slush) in any form,

(b) Operations are not conducted in known or forecast icing conditions,

(c) Both Ice Detection Systems are operative; and,

(d) Operations are conducted in day VMC conditions only."

After the replacement has been accomplished, the statement or the copy of this AD may be removed from the AFM. At the applicable time specified in Table 1 of this AD, if the degraded transducer was replaced with a serviceable transducer; or within 2,000 flight hours after replacement with a new transducer: Do the measurement for that replacement transducer and repeat the measurement thereafter at intervals not to exceed the applicable interval specified in Table 1 of this AD. Do the measurement in accordance with Part A of Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008.

(2) If, during any repetitive measurement required by paragraphs (f)(1)(i), (f)(1)(ii), and (f)(1)(iii) of this AD, any AOA transducer is found to have an inrush current below 1.60 amps, before further flight, replace that transducer in accordance with Part C of the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008. At the applicable time specified in Table 1 of this AD, if the degraded transducer was replaced with a serviceable transducer; or within 2,000 flight hours after replacement if the degraded transducer was replaced with a new transducer: Do the measurement for that

replacement transducer as specified in paragraph (f)(1)(ii)(B) of this AD and repeat the measurement thereafter at intervals not to exceed the applicable interval specified in Table 1 of this AD.

(3) Actions done before March 9, 2009, in accordance with Bombardier Service Bulletin 601R-27-153, dated October 17, 2008, are acceptable for compliance with the corresponding requirements of paragraphs (f)(1) and (f)(2) of this AD.

#### New Requirements of This AD: Actions and Compliance

(g) Unless already done, do the following actions.

(1) For airplanes equipped with a transducer having accumulated 7,500 or fewer flight hours as of March 9, 2009, except transducers that have been measured in accordance with paragraph (f)(1) of this AD: Do the actions specified in paragraph (f)(1) of this AD before the transducer accumulates 7,500 total flight hours, or within 500 flight hours after the effective date of this AD, whichever occurs later.

(2) Within 900 flight hours after the effective date of this AD, inspect AOA transducers having P/N 45150340 or C16258AA to determine the serial numbers. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial number of the AOA transducer can be conclusively determined from that review.

(i) If the serial number is not identified in paragraph 1.A.(1) of Bombardier Service Bulletin 601R-27-154, dated December 1, 2008, no further action is required by this paragraph.

(ii) If the part number and serial number are identified in one of the tables in paragraph 1.A.(1) of Bombardier Service Bulletin 601R-27-154, dated December 1, 2008, and have the suffix "A," no further action is required by this paragraph.

**Note 1:** Bombardier Service Bulletin 601R-27-154, dated December 1, 2008, references Thales Avionics Service Bulletins 45150340-31-004 and C16258A-27-002, both dated November 28, 2008, as additional sources of guidance for part and serial number information.

(iii) If the part number and serial number are identified in a table in paragraph 1.A.(1) of Bombardier Service Bulletin 601R-27-154, dated December 1, 2008, before further flight, replace the AOA transducer with a new or serviceable transducer, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 601R-27-154, dated December 1, 2008.

(3) As of the effective date of this AD, no person may install a replacement AOA transducer having P/N 45150340 or P/N C16258AA with a serial number identified in paragraph 1.A.(1) of Bombardier Service Bulletin 601R-27-154, dated December 1, 2008, unless the serial number has the suffix "A."

#### FAA AD Differences

**Note 2:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228-7300; fax (516) 794-5531. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(i) Refer to MCAI Canadian Airworthiness Directive CF-2008-35, dated December 22, 2008; Bombardier Service Bulletin 601R-27-154, dated December 1, 2008; and Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008; for related information.

#### Material Incorporated by Reference

(j) You must use Bombardier Service Bulletin 601R-27-154, dated December 1, 2008; and Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Bombardier Service Bulletin 601R-27-154, dated December 1, 2008, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Bombardier Service Bulletin 601R-27-153, Revision A, dated December 16, 2008, on March 9, 2009 (74 FR 7789, February 20, 2009).

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514-855-5000; fax 514-855-7401; e-mail [thd.crj@aero.bombardier.com](mailto:thd.crj@aero.bombardier.com); Internet <http://www.bombardier.com>.

(4) You may review copies of the service information at the FAA, Transport Airplane

Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on March 25, 2010.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010-7801 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2010-0282; Directorate Identifier 2009-NM-140-AD; Amendment 39-16262; AD 2010-08-07]

**RIN 2120-AA64**

#### Airworthiness Directives; Airbus Model 340-500 and -600 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule; request for comments.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Following successive ECAM [electronic centralized aircraft monitoring] warnings during the approach phase, just after the landing gear extension sequence and an uneventful landing, the maintenance inspection on an Airbus A340 has revealed a hydraulic leak that was caused by the failure of the Yellow high pressure (HP) hydraulic pipe supplying the back-up Nose Wheel Steering (NWS) which runs along the lower part of the avionics bay from frame 17 to frame 20.

This leak resulted in the loss of the Yellow hydraulic system and contamination of the avionics bay with sprayed hydraulic fluid.

This condition, if not detected and corrected, could result in an ingestion of hydraulic fluid in the electrical connectors, which could generate an arcing phenomenon and, if sufficient energy is provided by the

arc, lead to an ignition source, which would be an unsafe condition.

\* \* \* \* \*

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

**DATES:** This AD becomes effective April 29, 2010.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of April 29, 2010.

We must receive comments on this AD by June 1, 2010.

**ADDRESSES:** You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM-116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-1138; fax (425) 227-1149.

#### SUPPLEMENTARY INFORMATION:

#### Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2009-0130, dated June 23, 2009 (referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

Following successive ECAM [electronic centralized aircraft monitoring] warnings

during the approach phase, just after the landing gear extension sequence and an uneventful landing, the maintenance inspection on an Airbus A340 has revealed a hydraulic leak that was caused by the failure of the Yellow high pressure (HP) hydraulic pipe supplying the back-up Nose Wheel Steering (NWS) which runs along the lower part of the avionics bay from frame 17 to frame 20.

This leak resulted in the loss of the Yellow hydraulic system and contamination of the avionics bay with sprayed hydraulic fluid.

This condition, if not detected and corrected, could result in an ingestion of hydraulic fluid in the electrical connectors, which could generate an arcing phenomenon and, if sufficient energy is provided by the arcing, lead to an ignition source, which would be an unsafe condition.

This AD requires the repetitive [detailed] inspection [for damage (e.g., chafing)] of the Yellow HP hydraulic line from frame 17 to the elbow connection near frame 20, the application of the associated corrective actions, as necessary, and the repetitive performance of a bleeding of the NWS system to verify the correct installation and condition of the HP hydraulic line.

Required actions also include a detailed inspection for missing or damaged P-clamps including their grommets. Corrective actions include replacing damaged or missing P-clamp grommets and replacing P-clamps. If any P-clamp grommet is found missing or damaged, inspecting the hydraulic pipe under damaged P-clamps for chafing is required. You may obtain further information by examining the MCAI in the AD docket.

#### Relevant Service Information

Airbus has issued All Operators Telex A340-29A5014, dated October 14, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

#### FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these

products are placed on the U.S. Register in the future.

#### Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

#### FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

#### Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2010-0282; Directorate Identifier 2009-NM-140-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that

section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

#### Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

**2010-08-07 Airbus:** Amendment 39-16262. Docket No. FAA-2010-0282; Directorate Identifier 2009-NM-140-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective April 29, 2010.

#### Affected ADs

- (b) None.

#### Applicability

(c) This AD applies to all Airbus Model A340-541 and -642 airplanes, certificated in any category, all manufacturer serial numbers.

#### Subject

(d) Air Transport Association (ATA) of America Code 29: Hydraulic power.

#### Reason

(e) The mandatory continued airworthiness information (MCAI) states:

Following successive ECAM [electronic centralized aircraft monitoring] warnings during the approach phase, just after the landing gear extension sequence and an uneventful landing, the maintenance inspection on an Airbus A340 has revealed an hydraulic leak that was caused by the failure of the Yellow high pressure (HP) hydraulic pipe supplying the back-up Nose Wheel Steering (NWS) which runs along the lower part of the avionics bay from frame 17 to frame 20.

This leak resulted in the loss of the Yellow hydraulic system and contamination of the avionics bay with sprayed hydraulic fluid.

This condition, if not detected and corrected, could result in an ingestion of hydraulic fluid in the electrical connectors, which could generate an arcing phenomenon and, if sufficient energy is provided by the arcing, lead to an ignition source, which would be an unsafe condition.

This AD requires the repetitive [detailed] inspection [for damage (e.g., chafing)] of the Yellow HP hydraulic line from frame 17 to the elbow connection near frame 20, the application of the associated corrective actions, as necessary, and the repetitive performance of a bleeding of the NWS system to verify the correct installation and condition of the HP hydraulic line.

Required actions also include a detailed inspection for missing or damaged P-clamps including their grommets. Corrective actions include replacing damaged or missing P-clamp grommets and replacing P-clamps. If any P-clamp grommet is found missing or damaged, inspecting the hydraulic pipe under damaged P-clamps for chafing is required.

#### Actions and Compliance

(f) Unless already done, do the following actions.

(1) At the applicable time specified in paragraph (f)(1)(i) or (f)(1)(ii) of this AD: Perform a detailed inspection for missing or damaged P-clamps, including their grommets, in accordance with the instructions of Airbus All Operators Telex A340-29A5014, dated October 14, 2008.

(i) If the airplane has accumulated 1,000 total flight cycles or more as of the effective date of this AD: Within 100 flight cycles after the effective date of this AD.

(ii) If the airplane has accumulated fewer than 1,000 total flight cycles as of the effective date of this AD: Within 250 flight cycles after the effective date of this AD.

(2) If any P-clamp grommet is found missing or damaged during the inspection required by paragraph (f)(1) of this AD: Perform a detailed inspection of the

hydraulic pipe under the damaged P-clamp for signs of damage (including bulging and chafing) in accordance with the instructions of Airbus All Operators Telex A340–29A5014, dated October 14, 2008. If the damage exceeds the applicable tolerance specified in paragraph (f)(2)(i) and (f)(2)(ii) of this AD, repair before further flight in accordance with Airbus All Operators Telex A340–29A5014, dated October 14, 2008.

**Note 1:** Guidance on repairing damage to the hydraulic pipe under the damaged P-clamp as specified in paragraph (f)(2) of this AD is in AMM Task 20–23–11 of the Airbus A340–600 Aircraft Maintenance Manual.

(i) For sharp-bottomed damage: 0.033 mm (0.001 inch) maximum depth.  
(ii) For round-bottomed damage: 0.066 mm (0.003 inch) maximum depth.

(3) If any P-clamp or grommet is found missing or damaged during the inspection required by paragraph (f)(1) of this AD, before further flight, replace the P-clamp, in accordance with the instructions of Airbus All Operators Telex A340–29A5014, dated October 14, 2008.

(4) At the applicable time specified in paragraph (f)(4)(i) or (f)(4)(ii) of this AD: Perform a detailed inspection to detect damage (including bulging and chafing) of the yellow high pressure hydraulic line from frame 17 to the elbow connection near frame 20, in accordance with the instructions of Airbus All Operators Telex A340–29A5014, dated October 14, 2008. If any damage is detected, before further flight, repair the pipeline in accordance with the instructions of Airbus All Operators Telex A340–29A5014, dated October 14, 2008.

**Note 2:** Guidance on repairing damage to the hydraulic pipe under the damaged P-clamp as specified in paragraph (f)(2) of this AD is in Task 20–23–11 of the Airbus A340–600 Aircraft Maintenance Manual.

(i) If the airplane has accumulated 1,000 total flight cycles or more as of the effective date of this AD: Within 100 flight cycles after the effective date of this AD.

(ii) If the airplane has accumulated fewer than 1,000 total flight cycles as of the effective date of this AD: Within 250 flight cycles after the effective date of this AD.

(5) At the same time as accomplishing the actions required by paragraphs (f)(1) and (f)(4) of this AD: Perform a bleeding of the nose wheel steering system, in accordance with the instructions of Airbus All Operators Telex A340–29A5014, dated October 14, 2008.

(6) Repeat the inspection required by paragraphs (f)(1) and (f)(4) of this AD and the bleeding of the nose wheel steering system required by paragraph (f)(5) of this AD at intervals not to exceed 500 flight cycles.

(7) At the applicable time in paragraph (f)(7)(i) or (f)(7)(ii) of this AD, submit a report of the findings (both positive and negative) of the inspections required by paragraphs (f)(1) and (f)(4) of this AD to Airbus Customer Services, Engineering and Technical Support, ATTN: Mr. C. DUPHIL, SEEL4, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone: +33/(0)5 61 93 40 05; fax: +33/(0)5 61 93 12 05; e-mail: [christophe.duphil@airbus.com](mailto:christophe.duphil@airbus.com).

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

#### FAA AD Differences

**Note 3:** This AD differs from the MCAI and/or service information as follows: Although the MCAI does not tell you to submit information to Airbus, paragraph (f)(7) of this AD specifies that such submittal is required.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Airworthiness Directive 2009–0130, dated June 23, 2009; and Airbus All Operators Telex A340–29A5014, dated October 14, 2008; for related information.

#### Material Incorporated by Reference

(i) You must use Airbus All Operators Telex A340–29A5014, dated October 14, 2008, to do the actions required by this AD, unless the AD specifies otherwise. (The issue date of Airbus All Operators Telex A340–29A5014 is indicated only on the first page of the document.)

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; e-mail: [airworthiness.A330-A340@airbus.com](mailto:airworthiness.A330-A340@airbus.com); Internet <http://www.airbus.com>.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Renton, Washington, on April 1, 2010.

**Ali Bahrami,**

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–8180 Filed 4–13–10; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2010–0056; Directorate Identifier 2009–CE–051–AD; Amendment 39–16259; AD 2010–08–04]

RIN 2120–AA64

**Airworthiness Directives; British Aerospace Regional Aircraft Model HP.137 Jetstream Mk.1, Jetstream Series 200, Jetstream Series 3101, and Jetstream Model 3201 Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** We are superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Cracks have been found in the NLG steering jack piston rod adjacent to the eye-end. This was caused by excessive torque which had been applied to the eye-end during assembly of the unit. Severe cracking, if not detected and corrected, can cause the jack to fail during operation, which may lead to loss of directional control of the aeroplane during critical phases of take-off and landing.

We are issuing this AD to require actions to correct the unsafe condition on these products.

**DATES:** This AD becomes effective May 19, 2010.

On May 19, 2010, the Director of the Federal Register approved the incorporation by reference of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA030644, Revision No. 1, dated August 19, 2008; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JM5414, dated August 6, 2004; and APPH Ltd. Bulletin 32-77, dated October 2003, listed in this AD.

As of June 26, 2007 (72 FR 28587, May 22, 2007), the Director of the Federal Register approved the incorporation by reference of BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32-JA030644, dated October 6, 2003; and APPH Ltd. Service Bulletin 32-76, Revision 1, dated August 2003, listed in this AD.

As of May 22, 2003 (68 FR 16195, April 3, 2003), the Director of the Federal Register approved the incorporation by reference of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA020741, dated November 2, 2002.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://www.regulations.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, ACE-112, Kansas City, Missouri 64106; telephone: (816) 329-4138; fax: (816) 329-4090.

#### **SUPPLEMENTARY INFORMATION:**

##### **Discussion**

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 21, 2010 (75 FR 3418), and proposed to supersede AD 2007-10-14, Amendment 39-15055 (72 FR 28587, May 22, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

Cracks have been found in the NLG steering jack piston rod adjacent to the eye-end. This was caused by excessive torque which had been applied to the eye-end during assembly of the unit. Severe cracking,

if not detected and corrected, can cause the jack to fail during operation, which may lead to loss of directional control of the aeroplane during critical phases of take-off and landing.

To address this unsafe condition, the UK CAA issued AD 003-11-2002 (which references BAE Systems Service Bulletin (SB) 32-JA020741), requiring an inspection for cracks and a measurement of the release torque of the piston rod end fitting to determine a new safe life (remaining fatigue life) for individual units. The revised safe life was calculated in accordance with the formula provided in associated APPH Ltd (the NLG Jack manufacturer) SB 32-76.

Following the completion of testing, APPH determined that the remaining fatigue life needed further reduction and published inspection criteria and a revised formula for calculating the piston safe life. This calculation and a revised end fitting tightening torque are contained in APPH SB 32-76 Revision 1. As a result, pistons which were previously calculated to have significant remaining life could possibly be unserviceable.

In response to this development, BAE Systems issued SB 32-JA030644 so that a revised calculation could be performed to establish the safe life of NLG steering jack pistons. Where not previously accomplished, the SB also recognised the need to inspect the piston for cracking and to measure the torque loading of the piston to eye-end joint so that safe life calculation could be performed. This SB superseded the earlier SB 32-JA020741 that produced an overly optimistic assessment of the component's safe life. The CAA UK issued AD G-2004-0029, superseding AD 003-11-2002, to require the accomplishment of these corrective actions.

Subsequent to the original issue of BAE Systems SB 32-JA030644, APPH introduced a modified unit (optionally installed on aeroplanes by application of BAE Systems SB 32-JM5414) that incorporates a strengthened piston with a defined safe life. This safe life is not calculated in accordance with the instructions of BAE Systems SB 32-JA030644, but is already declared in BAE Systems SB 32-JA981042, currently at revision 7. In response to requests for clarification, BAE Systems has revised SB 32-JA030644 to exclude those aeroplanes from the 'Effectivity' that have the modified steering jack assembly installed in accordance with BAE modification JM5414.

For the reasons described above, this new AD retains the requirements of UK CAA AD G-2004-0029, which is superseded, and confirms that for aeroplanes incorporating BAE modification JM5414, no further action is required.

##### **Comments**

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

##### **Conclusion**

We reviewed the available data and determined that air safety and the

public interest require adopting the AD as proposed.

##### **Differences Between This AD and the MCAI or Service Information**

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the AD.

##### **Costs of Compliance**

We estimate that this AD will affect 190 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to comply with the basic requirements of this AD. The average labor rate is \$85 per work-hour.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be \$32,300, or \$170 per product.

##### **Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

##### **Regulatory Findings**

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

- (1) Is not a "significant regulatory action" under Executive Order 12866;
- (2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the ADDRESSES section. Comments will be available in the AD docket shortly after receipt.

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

#### Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

#### PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

##### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39-15055 (72 FR 28587; May 22, 2007), and adding the following new AD:

**2010-08-04 British Aerospace Regional Aircraft:** Amendment 39-16259; Docket No. FAA-2010-0056; Directorate Identifier 2009-CE-051-AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective May 19, 2010.

#### Affected ADs

(b) This AD supersedes AD 2007-10-14, Amendment 39-15055.

#### Applicability

(c) This AD applies to Model HP.137 Jetstream Mk.1, Jetstream Series 200,

Jetstream Series 3101, and Jetstream Model 3201 airplanes, all serial numbers, that are:

- (1) Equipped with steering jack part number (P/N) 6182-2, P/N 6182-3, or P/N 6182-4; and
- (2) Certificated in any category.

#### Subject

(d) Air Transport Association of America (ATA) Code 32: Landing Gear.

#### Reason

(e) The mandatory continuing airworthiness information (MCAI) states: Cracks have been found in the NLG steering jack piston rod adjacent to the eye-end. This was caused by excessive torque which had been applied to the eye-end during assembly of the unit. Severe cracking, if not detected and corrected, can cause the jack to fail during operation, which may lead to loss of directional control of the aeroplane during critical phases of take-off and landing.

To address this unsafe condition, the UK CAA issued AD 003-11-2002 (which references BAE Systems Service Bulletin (SB) 32-JA020741), requiring an inspection for cracks and a measurement of the release torque of the piston rod end fitting to determine a new safe life (remaining fatigue life) for individual units. The revised safe life was calculated in accordance with the formula provided in associated APPH Ltd (the NLG Jack manufacturer) SB 32-76.

Following the completion of testing, APPH determined that the remaining fatigue life needed further reduction and published inspection criteria and a revised formula for calculating the piston safe life. This calculation and a revised end fitting tightening torque are contained in APPH SB 32-76 Revision 1. As a result, pistons which were previously calculated to have significant remaining life could possibly be unserviceable.

In response to this development, BAE Systems issued SB 32-JA030644 so that a revised calculation could be performed to establish the safe life of NLG steering jack pistons. Where not previously accomplished, the SB also recognised the need to inspect the piston for cracking and to measure the torque loading of the piston to eye-end joint so that safe life calculation could be performed. This SB superseded the earlier SB 32-JA020741 that produced an overly optimistic assessment of the component's safe life. The CAA UK issued AD G-2004-0029, superseding AD 003-11-2002, to require the accomplishment of these corrective actions.

Subsequent to the original issue of BAE Systems SB 32-JA030644, APPH introduced a modified unit (optionally installed on aeroplanes by application of BAE Systems SB 32-JM5414) that incorporates a strengthened piston with a defined safe life. This safe life is not calculated in accordance with the instructions of BAE Systems SB 32-JA030644, but is already declared in BAE Systems SB 32-JA981042, currently at revision 7. In response to requests for clarification, BAE Systems has revised SB 32-JA030644 to exclude those aeroplanes from the 'Effectivity' that have the modified steering jack assembly installed in accordance with BAE modification JM5414.

For the reasons described above, this new AD retains the requirements of UK CAA AD G-2004-0029, which is superseded, and confirms that for aeroplanes incorporating BAE modification JM5414, no further action is required.

#### Actions and Compliance

(f) Unless already done, do the following actions:

(1) For airplanes where the actions in British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA020741, dated November 2, 2002 (APPH Ltd. Service Bulletin 32-76, Revision 1, dated August 2003), have not already been done:

(i) Within 2 months after June 26, 2007 (the effective date retained from AD 2007-10-14), inspect the steering jack piston rod, check the torque of the end fitting, and determine the safe life of the steering jack piston rod following BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32-JA030644, dated October 6, 2003. You may do the actions required in this paragraph following paragraph 2, Part 1 of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA030644, Revision No. 1, dated August 19, 2008, to comply with this AD.

(ii) If the piston rod is found cracked or unserviceable during the inspection required in paragraph (f)(1)(i) of this AD, before further flight, remove the steering jack and replace it with a serviceable unit.

(2) For airplanes where the actions in BAE British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA020741, dated November 2, 2002 (APPH Ltd. Service Bulletin 32-76, Revision 1, dated August 2003), have already been done:

(i) Within 3 months after June 26, 2007 (the effective date retained from AD 2007-10-14), recalculate the safe life of the steering jack piston rod and re-torque the piston rod eye-end following BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32-JA030644, dated October 6, 2003. You may do the actions required in this paragraph following paragraph 2, Part 2 of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA030644, Revision No. 1, dated August 19, 2008, to comply with this AD.

(ii) If the piston rod is found unserviceable during the inspection required in paragraph (f)(2)(i) of this AD, before further flight, remove the steering jack and replace it with a serviceable unit.

(3) For airplanes equipped with steering jack part number (P/N) 6182-2, P/N 6182-3, or P/N 6182-4 incorporating Strike-off 4, installed by BAE Systems modification JM5414 (refer to British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JM5414, dated August 6, 2004; and APPH Ltd. Bulletin 32-77, dated October 2003): the actions specified in paragraph (f)(1), (f)(1)(i), (f)(1)(ii), (f)(2), (f)(2)(i), or (f)(2)(ii) of this AD are not required.

(4) For all airplanes: After June 26, 2007 (the effective date retained from AD 2007-10-14), do not install a steering jack piston rod with P/N 6182-2, P/N 6182-3, or P/N 6182-4, unless it has been inspected and the safe life recalculated following BAE Systems



British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32-JA030644, dated October 6, 2003. You may inspect and recalculate the safe life of the steering jack piston rod following paragraph 2 of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA030644, Revision No. 1, dated August 19, 2008, to comply with this AD.

#### FAA AD Differences

**Note:** This AD differs from the MCAI and/or service information as follows: No differences.

#### Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Taylor Martin, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4138; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

#### Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No.: 2009-0135, dated June 23, 2009; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA020741, dated November 2, 2002; BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32-JA030644, dated October 6, 2003; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA030644, Revision No. 1, dated August 19, 2008; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JM5414, dated August 6, 2004; APPH Ltd. Service Bulletin 32-76, Revision 1, dated August 2003; and APPH Ltd. Service Bulletin 32-77, dated October 2003, for related information.

#### Material Incorporated by Reference

(i) You must use British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA020741, dated November 2, 2002; BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32-

JA030644, dated October 6, 2003; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA030644, Revision No. 1, dated August 19, 2008; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JM5414, dated August 6, 2004; APPH Ltd. Service Bulletin 32-76, Revision 1, dated August 2003; and APPH Ltd. Service Bulletin 32-77, dated October 2003, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA030644, Revision No. 1, dated August 19, 2008; British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JM5414, dated August 6, 2004; and APPH Ltd. Bulletin 32-77, dated October 2003, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On June 26, 2007 (72 FR 28587, May 22, 2007), the Director of the Federal Register previously approved the incorporation by reference of BAE Systems British Aerospace Jetstream Series 3100 & 3200 Service Bulletin 32-JA030644, dated October 6, 2003; and APPH Ltd. Service Bulletin 32-76, Revision 1, dated August 2003.

(3) On May 22, 2003 (68 FR 16195, April 3, 2003), the Director of the Federal Register previously approved the incorporation by reference of British Aerospace Jetstream Series 3100 & 3200 Service Bulletin No. 32-JA020741, dated November 2, 2002.

(4) For service information identified in this AD, contact BAE Systems (Operations) Ltd, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; Telephone +44 1292 675207, Facsimile +44 1292 675704; E-mail: [RApublications@baesystems.com](mailto:RApublications@baesystems.com).

(5) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329-3768.

(6) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

Issued in Kansas City, Missouri, on March 31, 2010.

**Steven R. Thompson,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 2010-7918 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2009-1009; Airspace Docket No. 09-AWP-11]

#### Modification of Class E Airspace; Oxnard, CA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action will modify Class E airspace at Point Mugu Naval Air Station (NAS), Oxnard, CA. Additional controlled airspace is necessary to accommodate aircraft flying in the Los Angeles Air Route Traffic Control Center's (ARTCC's) airspace area. The FAA is taking this action to enhance the safety and management of aircraft operations in Los Angeles ARTCC's airspace. This action also makes a minor change to the name and geographic coordinates of Point Mugu NAS, Oxnard, CA.

**DATES:** *Effective Date:* 0901 UTC, June 3, 2010. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

**FOR FURTHER INFORMATION CONTACT:** Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203-4537.

#### SUPPLEMENTARY INFORMATION:

##### History

On December 29, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to establish additional controlled airspace at Point Mugu NAS, Oxnard, CA (74 FR 68748). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. The FAA found the acronym NAS in the airport name was typed as NAWS, and also updates the geographic coordinates to coincide with the FAA's National Aeronautical Charting Office.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR part 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.



## The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by adding additional Class E airspace 700 and 1,200 feet above the surface for Point Mugu NAS, Oxnard, CA, to accommodate the vectoring of aircraft flying en route, in and out of the Los Angeles ARTCC's airspace area. This action enhances the safety and management of aircraft operations in Los Angeles ARTCC's airspace. This action also changes the name from Point Mugu NAWs, to Point Mugu NAS, and updates the geographic coordinates of Point Mugu NAS, Oxnard, CA.

The FAA has determined this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 discusses the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Point Mugu NAS, Oxnard, CA.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E. O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

\* \* \* \* \*

#### AWP CA E5 Oxnard, CA

Point Mugu NAS (Naval Base Ventura Co), CA

(Lat. 34°07'09"N., long. 119°07'10"W.)

That airspace extending upward from 700 feet above the surface beginning at lat. 34°01'56"N., long. 119°01'44"W.; to lat. 34°02'30"N., long. 118°53'33"W.; to lat. 34°19'30"N., long. 118°53'03"W.; to lat. 34°19'30"N., long. 119°29'53"W.; thence 3 miles west of and parallel to the shoreline to lat. 34°14'50"N., long. 119°22'03"W.; to lat. 34°14'45"N., long. 119°23'33"W.; to lat. 34°06'55"N., long. 119°22'33"W.; to lat. 34°07'41"N., long. 119°15'40"W., thence via a 7-mile radius of Point Mugu NAS to the point of beginning. That airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 34°30'00"N., long. 118°50'03"W.; to lat. 34°00'00"N., long. 118°50'03"W.; to lat. 34°00'00"N., long. 119°05'00"W.; to lat. 33°52'03"N., long. 119°06'59"W.; to lat. 33°28'30"N., long. 119°07'03"W.; to lat. 33°28'30"N., long. 118°47'00"W.; to lat. 33°19'30"N., long. 118°37'03"W.; to lat. 32°53'00"N., long. 119°13'00"W.; to lat. 33°05'00"N., long. 119°45'07"W.; to lat. 33°53'00"N., long. 120°38'00"W.; to lat. 33°54'00"N., long. 120°00'03"W.; to lat. 34°20'00"N., long. 120°00'04"W.; to lat. 34°20'00"N., long. 119°30'03"W.; to lat. 34°30'00"N., long. 119°30'03"W., thence to the point of beginning, excluding that airspace more than 12 nautical miles from the shoreline. That airspace extending upward from 5,000 feet MSL bounded by a line beginning at lat. 34°08'00"N., long. 120°00'03"W.; to lat. 33°54'00"N., long. 120°00'03"W.; to lat. 33°53'00"N., long. 120°38'00"W.; to lat. 33°55'00"N., long. 120°40'00"W.; to lat. 34°00'00"N., long. 120°43'00"W.; to lat. 34°06'15"N., long. 120°30'04"W.; to lat. 34°08'00"N., long. 120°26'04"W., thence to the point of beginning, excluding that airspace more than 12 nautical miles from the shoreline.

Issued in Seattle, Washington, on March 31, 2010.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 2

[Docket No. FDA–2006–N–0304] (formerly Docket No. 2006N–0262)

RIN 0910–AF92

### Use of Ozone-Depleting Substances; Removal of Essential-Use Designation (Flunisolide, etc.)

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA), after consultation with the Environmental Protection Agency (EPA), is amending FDA's regulation on the use of ozone-depleting substances (ODSs) in self-pressurized containers to remove the essential-use designations for flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil used in oral pressurized metered-dose inhalers (MDIs). The Clean Air Act requires FDA, in consultation with the EPA, to determine whether an FDA-regulated product that releases an ODS is an essential use of the ODS. FDA has concluded that there are no substantial technical barriers to formulating flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil as products that do not release ODSs, and therefore they will no longer be essential uses of ODSs as of the effective dates of this rule. MDIs for these active moieties containing an ODS may not be marketed after the relevant effective date.

**DATES:** Removal of § 2.125(e)(2)(iii) and § 2.125(e)(4)(vii) is effective June 14, 2010. Removal of § 2.125(e)(1)(v) and § 2.125(e)(4)(iv) is effective December 31, 2010. Removal of § 2.125(e)(1)(iii) is effective June 30, 2011. Removal of § 2.125(e)(2)(iv) and § 2.125(e)(4)(viii) is effective December 31, 2013.

**ADDRESSES:** For access to the docket to read background documents or comments received, go to <http://>

[www.regulations.gov](http://www.regulations.gov) and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:**

Martha Nguyen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6352, Silver Spring, MD 20993-0002, 301-796-3601.

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**I. Introduction and Highlights of the Rule**

With this rule, FDA removes the last remaining essential-use designations for chlorofluorocarbons (CFCs) used in MDIs for the treatment of asthma and chronic obstructive pulmonary disease (COPD). This regulatory action is the culmination of many years of efforts to

protect the environment by limiting the production and use of ODSs. It began with a rulemaking in 1978 and involved an international treaty, legislation, and rulemakings as described in the background section. After the effective date of this rule, there will remain only three essential uses of ODSs: (1) Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application; (2) metered-dose atropine sulfate aerosol human drugs administered by oral inhalation; and (3) sterile aerosol talc administered intrapleurally by thoracoscopy for human use (21 CFR 2.125(e)(4)(iii), (vi), and (ix)).

On June 11, 2007, FDA published a proposed rule in the **Federal Register** (72 FR 32030) (the proposed rule), proposing to remove the essential-use designations for oral pressurized MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil. These MDIs containing chlorofluorocarbons (CFCs) or other ODSs may not be marketed without an essential-use designation. There are three criteria that must all be met for each of these MDIs to retain their essential-use designation. For each of these MDIs to retain its essential-use designation, we must find that:

1. Substantial technical barriers exist to formulating the product without ODSs;

2. The product will provide an unavailable important public health benefit; and

3. Use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the unavailable important public health benefit.

With respect to MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, cromolyn, and nedocromil, we tentatively found in the proposed rule that no substantial technical barriers exist to formulating them without ODSs, they do not provide an otherwise unavailable important public health benefit because of the availability of therapeutic alternatives, and the release of ODSs into the atmosphere from these MDIs is cumulatively significant and is not warranted because they do not provide an otherwise unavailable important public health benefit. In addition, we had proposed an effective date for this rule of December 31, 2009.

After considering the information received at the August 2, 2007, public meeting and written comments submitted in response to the proposal, FDA has concluded that there are no

substantial technical barriers to formulating flunisolide, triamcinolone, metaproterenol, pirbuterol, cromolyn, and nedocromil as products that do not release ODSs, and therefore flunisolide, triamcinolone, metaproterenol, pirbuterol, cromolyn, and nedocromil no longer meet the criteria to be an essential use of ODSs. We have also determined that the appropriate effective date for the removal of the essential-use designation for metaproterenol and nedocromil MDIs is June 14, 2010, the appropriate effective date for the removal of the essential-use designation for triamcinolone and cromolyn MDIs is December 31, 2010, and the appropriate effective date for the removal of the essential-use designation for flunisolide is June 30, 2011. In addition, we have determined that the appropriate effective date for pirbuterol is December 31, 2013, because this date provides over 3 years for Maxair Autohaler (pirbuterol acetate inhalation aerosol) users who are accustomed to a breath-actuated device to consult with their health care providers, evaluate options, and transition to appropriate therapeutic alternatives. We will discuss our determinations on the criteria and the effective date in section IV of this document, "Comments on the 2007 Proposed Rule."

With respect to MDIs containing albuterol and ipratropium in combination, we were unable to determine initially whether substantial technical barriers exist to formulating them without ODSs. In the proposed rule, we tentatively found that these MDIs do not provide an otherwise unavailable important public health benefit and the release of ODSs into the atmosphere from these MDIs is cumulatively significant and is not warranted because they do not provide an otherwise unavailable important public health benefit. Again, we proposed an effective date for this rule of December 31, 2009.

After considering the information received at the August 2, 2007, public meeting and written comments submitted in response to the proposal, FDA has concluded that there are no substantial technical barriers to formulating albuterol and ipratropium bromide in combination as a product that does not release ODSs, and therefore albuterol and ipratropium bromide in combination no longer meets the criteria to be an essential use of ODSs. We have determined that the appropriate effective date for the removal of the essential-use designation for albuterol and ipratropium bromide in combination is December 31, 2013,

because this date provides over 3 years to disseminate information about the transition to Combivent Inhalation Aerosol users who may have multiple health conditions that may make the transition to therapeutic alternatives more difficult. The transition period allows these individuals time to consult with their health care providers, evaluate options, and transition to appropriate therapeutic alternatives. We will discuss our determinations on the criteria and the effective date in section IV of this document "Comments on the 2007 Proposed Rule."

## II. Background

### A. CFCs

Chlorofluorocarbons (CFCs) are organic compounds that contain carbon, chlorine, and fluorine atoms. CFCs were first used commercially in the early 1930s as a replacement for hazardous materials then used in refrigeration, such as sulfur dioxide and ammonia. Subsequently, CFCs were found to have a large number of uses, including as solvents and as propellants in self-pressurized aerosol products, such as MDIs.

CFCs are very stable in the troposphere, the lowest part of the atmosphere. They move to the stratosphere, a region that begins about 10 to 16 kilometers (km) (6 to 10 miles) above the Earth's surface and extends up to about 50 km (31 miles) altitude. Within the stratosphere, there is a zone about 15 to 40 km (10 to 25 miles) above the Earth's surface in which ozone is relatively highly concentrated. This zone in the stratosphere is generally called the stratospheric ozone layer. Once in the stratosphere, CFCs are gradually broken down by strong ultraviolet light, releasing chlorine atoms that then deplete stratospheric ozone. Depletion of stratospheric ozone by CFCs and other ODSs allows more ultraviolet-B (UV-B) radiation to reach the Earth's surface, where it increases skin cancers and cataracts, and damages some marine organisms, plants, and plastics.

### B. Regulation of ODSs

The link between CFCs and the depletion of stratospheric ozone was discovered in the mid-1970s. Since 1978, the U.S. Government has pursued a vigorous and consistent policy, through the enactment of laws and regulations, of limiting the production, use, and importation of ODSs, including CFCs.

### 1. The 1978 Rules

In the **Federal Register** of March 17, 1978 (43 FR 11301), FDA and EPA published rules banning, with a few exceptions, the use of CFCs as propellants in aerosol containers. These rules were issued under authority of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*) and the Toxic Substances Control Act (15 U.S.C. 2601 *et seq.*), respectively. FDA's rule (the 1978 rule) was codified as § 2.125 (21 CFR 2.125). These rules issued by FDA and EPA had been preceded by rules issued by FDA and the Consumer Product Safety Commission requiring products that contain CFC propellants to bear environmental warning statements on their labeling (42 FR 22018, April 29, 1977; 42 FR 42780, August 24, 1977).

The 1978 rule prohibited the use of CFCs as propellants in self-pressurized containers in any food, drug, medical device, or cosmetic. As originally published, the rule listed five essential uses exempt from the ban. The second listed essential use was for "[m]etered-dose steroid bronchodilator human drugs for oral inhalation." This use describes flunisolide MDIs and triamcinolone MDIs. The third listed essential use was for "[m]etered-dose adrenergic bronchodilator human drugs for oral inhalation." This use describes metaproterenol MDIs and pirbuterol MDIs.<sup>1</sup>

The 1978 rule provided criteria for adding new essential uses, and several uses were added to the list using these criteria, the last one in 1996. The 1978 rule did not provide any mechanism for removing essential uses from the list as alternative products were developed or CFC-containing products were removed from the market. The absence of a removal procedure came to be viewed as a deficiency in the 1978 rule, and was addressed in a later rulemaking, discussed in section II.B.5 of this document.

### 2. The Montreal Protocol

On April 21, 1989, the United States became a Party to the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, 26 I.L.M. 1541 (1987)),

<sup>1</sup> The essential-use designation for "[m]etered-dose cromolyn sodium human drugs administered by oral inhalation" was added to § 2.125(e) on February 6, 1986 (51 FR 5190). The essential-use designation for "[m]etered-dose nedocromil sodium human drugs administered by oral inhalation" was added to § 2.125(e) on January 26, 1993 (58 FR 6086). The essential-use designation for "[m]etered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation" was added on April 9, 1996 (61 FR 15700).

available at <http://www.unep.org/ozone/pdfs/Montreal-Protocol2000.pdf>.<sup>2</sup> The United States played a leading role in the negotiation of the Montreal Protocol, believing that internationally coordinated control of ODSs would best protect both the U.S. and global public health and the environment from potential adverse effects of depletion of stratospheric ozone. Currently, there are 196 Parties to this treaty.<sup>3</sup> When it joined the treaty, the United States committed to reducing production and consumption of certain CFCs to 50 percent of 1986 levels by 1998–99 (Article 2(4) of the Montreal Protocol). It also agreed to accept an “adjustment” procedure, by which, following assessment of the existing control measures, the Parties could adjust the scope, amount, and timing of those control measures for substances already subject to the Montreal Protocol. As the evidence regarding the impact of ODSs on the ozone layer became stronger, the Parties used this adjustment procedure to accelerate the phase-out of ODSs. At the fourth Meeting of the Parties to the Montreal Protocol, held at Copenhagen in November 1992, the Parties adjusted Article 2 of the Montreal Protocol to eliminate the production and importation of CFCs by January 1, 1996, by Parties that are developed countries (Decision IV/2).<sup>4</sup> The adjustment also indicated that it would apply, “save to the extent that the Parties decide to permit the level of production or consumption that is necessary to satisfy uses agreed by them to be essential” (Article 2A(4)). Under the treaty’s rules of procedure, an essential-use decision requires a two-thirds majority vote by the Parties to the treaty, although, to date, all such decisions have been made by consensus. To produce or import CFCs for an essential use under the Montreal Protocol, a Party must request

and obtain approval for an exemption at a Meeting of the Parties.

One of the most important essential uses of CFCs under the Montreal Protocol is their use in MDIs for the treatment of asthma and COPD. The decision on whether the use of CFCs in MDIs is “essential” for purposes of the Montreal Protocol turns on whether “(1) It is necessary for the health, safety, or is critical for the functioning of society (encompassing cultural and intellectual aspects) and (2) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health” (Decision IV/25).

Each request and any subsequent exemption is for only 1 year’s duration (Decision V/18). Since 1994, the United States and some other Parties to the Montreal Protocol have annually requested, and been granted, essential-use exemptions for the production or importation of CFCs for their use in MDIs for the treatment of asthma and COPD (see, among others, Decisions VI/9 and VII/28). The exemptions have been consistent with the criteria established by the Parties, which make the grant of an exemption contingent on a finding that the use for which the exemption is being requested is essential for health, safety, or the functioning of society, and that there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of health or the environment (Decision IV/25).

Phasing out the use of CFCs in MDIs for the treatment of asthma and COPD has been an issue of particular interest to the Parties to the Montreal Protocol. Several decisions of the Parties have dealt with the transition to CFC-free MDIs, including the following decisions:

- Decision VIII/10 stated that the Parties that are developed countries would take various actions to promote industry’s participation in a smooth and efficient transition away from CFC-based MDIs (San Jose, Costa Rica, 1996).
- Decision IX/19 required developed country Parties that submitted essential-use nominations for CFC-propelled MDIs to present an initial national or regional transition strategy by January 31, 1999 (Montreal, Canada, 1997).
- Decision XII/2 elaborated on the content of national or regional transition strategies required under Decision IX/19 and indicated that any MDI for the treatment of asthma or COPD approved for marketing after 2000 would not be an “essential use” unless it met the criteria laid out by the Parties for

essential uses (Ouagadougou, Burkina Faso, 2000).

- Decision XIV/5 requested that each Party report annually the quantities of CFC and non-CFC MDIs and dry-powder inhalers (DPIs) sold or distributed within its borders and the approval and marketing status of non-CFC MDIs and DPIs. Decision XIV/5 also noted “with concern the slow transition to CFC-free metered-dose inhalers in some Parties” (Rome, Italy, 2002).

- Decision XV/5 states that, at the 17th Meeting of the Parties (in December 2005) or thereafter, no essential uses of CFCs will be authorized for Parties that are developed countries, unless the Party requesting the essential-use allocation has submitted an action plan. Among other items, the action plan should include a specific date by which the Party plans to cease requesting essential-use allocations of CFCs for albuterol MDIs to be sold or distributed in developed countries<sup>5</sup> (Nairobi, Kenya, 2003).

- Decision XVII/5 states that Parties that are developed countries should provide a date to the Ozone Secretariat<sup>6</sup> before the 18th Meeting of the Parties (October 30 to November 3, 2006) by which time a regulation or regulations will have been proposed to determine whether MDIs, other than those that have albuterol as the only active ingredient, are nonessential (Dakar, Senegal, 2005).

### 3. The 1990 Amendments to the Clean Air Act

In 1990, Congress amended the Clean Air Act to, among other things, better protect stratospheric ozone (Public Law

<sup>5</sup> Our obligation under XV/5 was met by our final rule eliminating the essential-use status of albuterol (70 FR 17168, April 4, 2005).

<sup>6</sup> The Ozone Secretariat is the Secretariat for the Montreal Protocol and the Vienna Convention for the Protection of the Ozone Layer (the Vienna Convention) (March 22, 1985, 26 I.L.M. 1529 (1985)), available at <http://ozone.unep.org/pdfs/viennaconvention2002.pdf>. Based at the United Nations Environment Programme (UNEP) offices in Nairobi, Kenya, the Secretariat functions in accordance with Article 7 of the Vienna Convention and Article 12 of the Montreal Protocol.

The main duties of the Secretariat include the following:

- Arranging for and servicing the Conference of the Parties, Meetings of the Parties, their Committees, the Bureaux, Working Groups, and Assessment Panels;
- Arranging for the implementation of decisions resulting from these meetings;
- Monitoring the implementation of the Vienna Convention and the Montreal Protocol;
- Reporting to the Meetings of the Parties and to the Implementation Committee;
- Representing the Convention and the Protocol; and
- Receiving and analyzing data and information from the Parties on the production and consumption of ODSs.

<sup>2</sup> FDA has verified all Web site addresses cited in this document, but FDA is not responsible for any subsequent changes to the Web sites after this document has published in the **Federal Register**.

<sup>3</sup> The summary descriptions of the Montreal Protocol and decisions of Parties to the Montreal Protocol contained in this document are presented here to help you understand the background of the action we are taking. These descriptions are not intended to be formal statements of policy regarding the Montreal Protocol. Decisions by the Parties to the Montreal Protocol are cited in this document in the conventional format of “Decision IV/2,” which refers to the second decision recorded in the Report of the Fourth Meeting of the Parties to the Montreal Protocol on Substances That Deplete the Ozone Layer. Reports of Meetings of the Parties to the Montreal Protocol may be found on the United Nations Environment Programme’s Web site at [http://ozone.unep.org/Meeting\\_Documents/mop](http://ozone.unep.org/Meeting_Documents/mop).

<sup>4</sup> Production of CFCs in economically less-developed countries is being phased out and is scheduled to end by January 1, 2010. See Article 2A of the Montreal Protocol.

No. 101–549, November 15, 1990) (the 1990 amendments). The 1990 amendments were drafted to complement, and be consistent with, our obligations under the Montreal Protocol (see section 614 of the Clean Air Act (42 U.S.C. 7671m)). Section 614(b) of the Clean Air Act provides that, in the case of a conflict between any provision of the Clean Air Act and any provision of the Montreal Protocol, the more stringent provision will govern. Section 604 of the Clean Air Act requires the phase-out of the production of CFCs by 2000 (42 U.S.C. 7671c),<sup>7</sup> while section 610 of the Clean Air Act (42 U.S.C. 7671i) required EPA to issue regulations banning the sale or distribution in interstate commerce of nonessential products containing CFCs. Sections 604 and 610 provide exceptions for “medical devices.” Section 601(8) (42 U.S.C. 7671(8)) of the Clean Air Act defines “medical device” as:

“any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), or drug delivery system-

(A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner [of Food and Drugs]; and (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner [of Food and Drugs] in consultation with the Administrator [of EPA].”

#### 4. EPA’s Implementing Regulations

EPA regulations implementing the Montreal Protocol and the stratospheric ozone protection provisions of the 1990 amendments are codified in part 82 of title 40 of the Code of Federal Regulations (40 CFR part 82). (See 40 CFR 82.1 for a statement of intent.) Like the 1990 amendments, EPA’s implementing regulations contain two separate prohibitions, one on the production and import of CFCs (subpart A of 40 CFR part 82) and the other on the sale or distribution of products containing CFCs (40 CFR 82.66).

The prohibition on production and import of CFCs contains an exception for essential uses and, more specifically, for essential MDIs. The definition of essential MDI at 40 CFR 82.3 requires

that the MDI be intended for the treatment of asthma or COPD, be essential under the Montreal Protocol, and if the MDI is for sale in the United States, be approved by FDA and listed as essential in FDA’s regulations at § 2.125.

The prohibition on the sale of products containing CFCs includes a specific prohibition on aerosol products and other pressurized dispensers. The aerosol product ban contains an exception for medical devices listed in § 2.125(e). The term “medical device” is used with the same meaning it was given in the 1990 amendments and FDA regulations have interpreted the term “medical device” to refer to any product that contains an active moiety that appears on the essential-use list found in § 2.125.

#### 5. FDA’s 2002 Regulation

In the 1990s, we decided that § 2.125 required revision to better reflect our obligations under the Montreal Protocol, the 1990 amendments, and EPA’s regulations, and to encourage the development of ozone-friendly alternatives to medical products containing CFCs. In particular, as acceptable alternatives that did not contain CFCs or other ODSs came on the market, there was a need to provide a mechanism for removing essential uses from the list in § 2.125(e). In the **Federal Register** of March 6, 1997 (62 FR 10242), we published an advance notice of proposed rulemaking (the 1997 ANPRM) in which we outlined our then-current thinking on the content of an appropriate rule regarding ODSs in products FDA regulates. We received almost 10,000 comments on the 1997 ANPRM. In response to the comments, we revised our approach and drafted a proposed rule published in the **Federal Register** of September 1, 1999 (64 FR 47719) (the 1999 proposed rule). We received 22 comments on the 1999 proposed rule. After minor revisions in response to these comments, we published a final rule in the **Federal Register** of July 24, 2002 (67 FR 48370) (the 2002 final rule) (corrected in 67 FR 49396, July 30, 2002, and 67 FR 58678, September 17, 2002). The 2002 final rule listed as a separate essential use each active moiety<sup>8</sup> marketed under the

1978 rule as essential uses for metered-dose steroid human drugs for oral inhalation and metered-dose adrenergic bronchodilator human drugs for oral inhalation; eliminated the essential-use designations in § 2.125(e) for metered-dose steroid human drugs for nasal inhalation and for products that were no longer marketed; set new standards to determine when a new essential-use designation should be added to § 2.125; and set standards to determine whether the use of an ODS in a medical product remains essential.

This rulemaking fulfills our obligation under § 2.125, as well as the Clean Air Act, the Montreal Protocol, and our general duty to protect the public health, by removing ODS products from the marketplace when those products are no longer essential.

### III. Criteria

The 2002 final rule revised 21 CFR § 2.125(g)(2) to establish a standard for removing an essential-use designation after January 1, 2005, for any drug for which there is no acceptable non-ODS alternative with the same active moiety. As explained in the proposed rule, we have reviewed the essential-use designation for flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil under that authority. The process for removing the essential-use designation under § 2.125(g)(2) includes consultation with a relevant advisory committee and an open public meeting, in addition to a proposed rule and a final rule. The criterion established for removing the essential use in such circumstances is that the use no longer meets the criteria specified in revised § 2.125(f) for adding a new essential use (21 CFR § 2.125(g)(2)). The criteria in § 2.125(f) are: “(i) Substantial technical barriers exist to formulating the product without ODSs; (ii) The product will provide an unavailable important public health benefit; and (iii) Use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or the release is warranted in view of the unavailable important public health benefit.”

The three criteria in § 2.25(f)(1) are linked by the word “and.” Because the three criteria are linked by “and” (as

ingredient, which, using the same example, would be pirbuterol acetate. When discussing particular indications and other material from the approved labeling of a drug product, we will generally use the brand name of the product, which, using the same example would be Maxair. In describing material from treatises, journals, and other non-FDA approved publications, we will generally follow the usage in the original publication.

<sup>7</sup> In conformance with Decision IV/2, EPA issued regulations accelerating the complete phase-out of CFCs, with exceptions for essential uses, to January 1, 1996 (58 FR 65018, December 10, 1993).

<sup>8</sup> Section 314.108(a) (21 CFR 314.108(a)) defines “active moiety” as the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance. When describing the various essential uses, we will generally refer to the active moiety, for example, pirbuterol, as opposed to the active

opposed to “or”), failure to meet any single criterion results in a determination that the use is not essential.

As noted in the 2002 proposed rule, we intend the term “technical barriers” to refer to difficulties encountered in chemistry and manufacturing. To demonstrate that substantial technical barriers exist, it would have to be established that all available alternative technologies have been evaluated and that each alternative is unusable (67 FR 48370 at 48373). In applying the “technical barriers” criterion, we look at the results of reformulation efforts for similar products, as well as statements made about the manufacturer’s particular efforts to reformulate its product or products.

In discussing what is “an unavailable important public health benefit,” we have said: The agency intends to give the phrase “unavailable important public health benefit” a markedly different construction from the [phrase used in the 1978 rule] “substantial health benefit.” One key point to note here is that the 2002 final rule (67 FR 48370) raised the hurdle for the public health benefit that needs to be shown. A use that was shown to have a “substantial health benefit” under the 1978 rule (all essential uses were established under the 1978 rule), will not necessarily be able to clear the higher hurdle of the 2002 final rule’s “unavailable important public health benefit.” A petitioner seeking to add an essential-use designation should show that the use of an ODS-containing MDI would save lives, significantly reduce or prevent an important morbidity, or significantly increase patient quality of life to support a claim of important public health benefit (64 FR 47719 at 47722).

In determining whether a drug product provides an otherwise unavailable important public health benefit, our primary focus is on the availability of non-ODS products that provide similar therapeutic benefits for patients who are currently using the CFC MDIs. If therapeutic alternatives to the CFC MDI exist, we can determine that the CFC MDI does not provide an otherwise unavailable important public health benefit.

The third criterion in § 2.125(f)(1) provides that the essential use must be eliminated unless we find either: (a) The use of the product does not release cumulatively significant amounts of ODSs into the atmosphere; or (b) the release, although cumulatively significant, is warranted in view of the otherwise unavailable important public

health benefit that the use of the drug product provides.

Based on an extensive record dating back to the 1970s, we reached a tentative conclusion in the proposed rule that the release of ODSs into the atmosphere from the MDIs that are the subject of this rulemaking is cumulatively significant. We noted that the use of CFCs in MDIs for the treatment of asthma and COPD is the only legal use in the United States of newly produced or imported CFCs; all other uses of newly produced or imported CFCs are prohibited by the Montreal Protocol. We noted that the environmental impact of individual uses of nonessential CFCs must not be evaluated independently, but rather must be evaluated in the context of the overall use of CFCs. Cumulative impacts can result from individually minor, but collectively significant, actions that take place over a period of time (40 CFR 1508.7).

The criteria in § 2.125(g)(2) (which refers to those found in § 2.125(f)(1)) that we are using in this rulemaking are different from those in § 2.125(g)(3) and (g)(4). Section 2.125(g)(2) specifically addresses the situation where there is no marketed non-ODS product containing the active moiety listed as an essential use, while § 2.125(g)(3) and (g)(4) apply to situations where there is at least one marketed non-ODS product with the listed active moiety. Section 2.125(g)(2) permits FDA to remove an essential use even if a current essential-use active moiety is not reformulated, provided that sufficient alternative products exist to meet the needs of patients, because the essential use would no longer provide an otherwise unavailable important health benefit. As we explained in the proposed rule, the analysis we use here is different from the analysis we used under § 2.125(g)(4) in the rulemaking to remove the essential use for albuterol (70 FR 17168, April 4, 2005). However, the basic concern of protecting the public health underlies all of the criteria. Therefore, our analyses are similar, and we have found it useful to borrow concepts from the more specific provisions of § 2.125(g)(3) and (g)(4) to help give more structure to our analysis under the broader language of § 2.125(f)(1).

Section 2.125(g)(2) requires that we consult an advisory committee and hold an open public meeting before we remove an essential-use designation when there is no non-ODS product with the same active moiety. Prior to publishing the proposed rule, on July 14, 2005, we consulted with FDA’s Pulmonary and Allergy Drugs Advisory Committee (PADAC) on the essential-

use status of MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil (PADAC meeting) (see 70 FR 24605, May 10, 2005).<sup>9</sup>

On August 2, 2007, following publication of the proposed rule, we held the required open public meeting to discuss the issues involved in removing the essential-use designations for flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil MDIs (see the **Federal Register** of July 9, 2007 (72 FR 37137)). Input from the open public meeting is considered and discussed in section IV of this document together with the written comments that were submitted in response to the proposed rule.

#### IV. Comments on the 2007 Proposed Rule

We received over 4,000 comments in response to the proposed rule. They were submitted by consumers, health care providers, patient advocacy groups, professional groups, manufacturers, a Congressional caucus, and industry organizations. The speakers who participated in the open public meeting on August 2, 2007, also submitted written comments. In the discussion that follows, we address the oral presentations and written comments submitted at or following the open public meeting, and the written and electronic comments submitted to the docket in response to the 2007 proposed rule.

To make it easier to identify comments and our responses, the word “Comment,” in parentheses, appears before the comment’s description, and the word “Response,” in parentheses, appears before our response. We have numbered each comment to help distinguish between different comments. Similar comments are grouped together under the same comment number. The number assigned to each comment is purely for organizational purposes and does not signify the comment’s value or importance or the order in which it was received.

In reviewing these comments we are particularly focused on our proposed findings relating to the criteria in § 2.125(f) of our regulations. As discussed above, we must remove the

<sup>9</sup> A transcript of the meeting and other meeting material is available on the Internet at <http://www.fda.gov/ohrms/dockets/ac/cder05.html#PulmonaryAllergy>.

essential-use designation for a CFC-containing drug product unless we find that all of the following are met: (1) Substantial technical barriers exist to formulating the product without ODSs; (2) the product provides an unavailable important public health benefit; and (3) use of the product does not release cumulatively significant amounts of ODSs into the atmosphere or, if the release is significant, it is warranted in view of the unavailable important public health benefit. As discussed in the proposed rule, the failure to meet any one of these criteria results in our determination that the use is not essential.

#### *A. Flunisolide, Triamcinolone, Metaproterenol*

We are removing the essential-use designations for MDIs containing flunisolide (Aerobid Inhaler System) and triamcinolone (Azmecort Inhalation Aerosol). Aerobid and Azmacort are orally inhaled corticosteroids. Azmacort is the only currently marketed drug product that provides orally inhaled triamcinolone. Both Aerobid and Aerospan Inhalation Aerosol provide orally inhaled flunisolide, but Aerobid is the only currently marketed flunisolide drug product that contains ODSs. Aerobid and Azmacort are the only two orally inhaled corticosteroids marketed that contain ODSs. Both drugs are indicated for the maintenance treatment and prophylaxis of asthma in patients 6 years of age and older, and both are prescription drugs. Flunisolide and triamcinolone, as well as other corticosteroids, are not indicated for relief of acute bronchospasm. Inflammation is an important component in the development of asthma. The anti-inflammatory actions of corticosteroids contribute to their efficacy in asthma. Though effective for the treatment of asthma, corticosteroids do not appreciably affect asthma symptoms immediately. Individual patients experience a variable time to onset and degree of symptom relief. Maximum benefit may not be achieved for 1 to 2 weeks or longer after starting treatment. Aerobid was approved on April 23, 1982, and Azmacort was approved on August 17, 1984. Their use was considered essential under the 1978 rule, which stated that “[m]etered-dose steroid human drugs for oral inhalation” were essential. Flunisolide and triamcinolone were designated as essential as different active moieties in the 2002 rule. In addition to the ODS-containing Aerobid, Aerospan Inhalation Aerosol, a new drug application (NDA) for a flunisolide HFA MDI, was approved January 27, 2006

(NDA 21–247), but has not yet been introduced onto the market.

We are also removing the essential-use designation for MDIs containing metaproterenol (Alupent Inhalation Aerosol). Metaproterenol is a short-acting beta<sub>2</sub>-adrenergic agonist used in the treatment of bronchospasm associated with asthma and COPD. It acts as a bronchodilator. Metaproterenol is also available as a syrup, as tablets, and as an inhalation solution for use in nebulizers. This rulemaking will not affect any dosage form of metaproterenol other than the Alupent Inhalation Aerosol which contains CFCs. Alupent Inhalation Aerosol is a prescription drug. Alupent Inhalation Aerosol’s use was considered essential under the 1978 rule, which stated that “[m]etered-dose adrenergic bronchodilator human drugs for oral inhalation” were essential. Metaproterenol was designated as essential as an active moiety in the 2002 rule. Alupent Inhalation Aerosol was approved on July 31, 1973. Boehringer Ingelheim Pharmaceuticals, Inc., the manufacturer of Alupent Inhalation Aerosols, has informed us that they discontinued U.S. distribution of Alupent Inhalation Aerosols as of November 14, 2008.

In the proposed rule, we tentatively concluded that there are no technical barriers to formulating flunisolide, triamcinolone, and metaproterenol MDIs without ODSs (72 FR 32030 at 32036–37). We did not receive any substantive comments disagreeing with our tentative conclusion. Therefore, we conclude that there are no technical barriers to formulating flunisolide, triamcinolone, and metaproterenol MDIs without ODSs. As stated earlier, flunisolide has been reformulated in an HFA MDI, but the product is not yet marketed. We also did not receive any substantive comments disagreeing with our tentative conclusion. Therefore, we conclude that there are no technical barriers to formulating cromolyn and nedocromil MDIs without ODSs. As explained in section III of this document, because the three criteria are linked by the word “and,” failure to meet any single criterion results in a determination that the use is not essential. Accordingly, because we have found in this rule that there are no substantial barriers to reformulating these products, we are required to find that the use of the products is not essential, and we do not need to reach a decision on the second or third criteria in § 2.125(f)(1).

<sup>10</sup> Abbott Laboratories, the NDA holder for Azmacort Inhalation Aerosol, submitted and later withdrew its comment. Therefore, we do not address the comment submitted by Abbott in response to the proposed rule.

#### *B. Cromolyn and Nedocromil*

Cromolyn sodium and nedocromil sodium are members of the class of drugs called “cromones.” Although it is not entirely clear how cromones exert their clinical effect, cromones are thought to inhibit antigen-induced bronchospasm as well as the release of histamine and other autacoids from sensitized mast cells. Cromolyn is also available for use in treating asthma as an inhalation solution for use in a nebulizer. Both cromolyn and nedocromil are also used in ophthalmic products, and cromolyn is available for oral administration for treatment of symptoms associated with mastocytosis. Only MDI formulations are affected by this rulemaking.

The only cromolyn MDI (Intal Inhaler) was approved for marketing on December 5, 1985. The essential-use designation for “[m]etered-dose cromolyn sodium human drugs administered by oral inhalation” was added to § 2.125(e) on February 6, 1986 (51 FR 5190). The only nedocromil MDI (Tilade Inhaler) was approved for marketing on December 30, 1992. The essential-use designation for “[m]etered-dose nedocromil sodium human drugs administered by oral inhalation” was added to § 2.125(e) on January 26, 1993 (58 FR 6086). Intal Inhaler and Tilade Inhaler are indicated for the management of asthma in patients 5 years and older and 6 years and older, respectively. Both are prescription drugs. Neither drug is indicated for the relief of acute bronchospasm. On November 21, 2008, King Pharmaceuticals, Inc., the manufacturer of Tilade Inhaler, informed us that they had discontinued manufacturing of Tilade Inhaler in July 2008.

In the proposed rule, we tentatively concluded that there are no technical barriers to formulating cromolyn and nedocromil MDIs without ODSs (72 FR 32030 at 32038). We did not receive any substantive comments disagreeing with our tentative conclusion. Therefore, we conclude that there are no technical barriers to formulating cromolyn and nedocromil MDIs without ODSs. As explained in section III of this document, because the three criteria in § 2.125(f)(1) are linked by the word “and,” failure to meet any single criterion results in a determination that the use is not essential. Accordingly, because we have found in this rule that there are no substantial barriers to reformulating these products, we are required to find that the use of the products is not essential, and we do not need to reach a decision on the second or third criteria in § 2.125(f)(1).



However, we received several comments addressing the second and third criteria with respect to cromolyn and nedocromil, and we respond to these comments below.

(Comment 1) We received one comment arguing that there are no acceptable treatment alternatives for cromolyn and nedocromil.

(Response) In the proposed rule, we identified several orally inhaled corticosteroids that do not contain CFCs as therapeutic alternatives to Intal Inhalers and Tilade Inhalers, including beclomethasone dipropionate inhalers, budesonide inhalers, fluticasone propionate inhalers, and mometasone furoate inhalers (72 FR 32030 at 32037). We believe that most patients using Intal Inhalers and Tilade Inhalers as a controller medication should be adequately served by at least one of these currently marketed formulations. The comment did not provide explanation as to why the proposed alternatives are insufficient, so it is difficult to address this comment more fully. In addition to the active moieties described in the proposed rule, oral montelukast may be an appropriate therapeutic alternative. Also, cromolyn is available in a solution for use in nebulizers. For patients who use Intal Inhalers to treat exercise-induced bronchospasm, inhaled beta<sub>2</sub>-agonists such as albuterol, salmeterol, and formoterol are considered suitable therapeutic alternatives.

(Comment 2) One comment notes that Intal inhalers are safe for pregnant women and protect against pet allergen exposure.

(Response) Current FDA regulations on labeling for use during pregnancy require the classification of each drug product under one of five pregnancy categories (A, B, C, D, or X) on the basis of risk of reproductive and developmental adverse effects or, for certain categories, on the basis of such risk weighed against potential benefit. 21 CFR § 201.57(c)(9)(i)(A)(2). Intal Inhalers are classified as a Pregnancy Category B drug. Pregnancy Category B indicates that animal reproduction studies have failed to demonstrate a risk to the fetus, and there are no adequate and well-controlled studies in pregnant women. In the proposed rule, we identified several non-CFC orally inhaled corticosteroids as therapeutic alternatives to cromolyn and nedocromil MDIs. One of these orally inhaled corticosteroids, budesonide inhalers (marketed as Pulmicort Turbuhaler and Pulmicort Flexhaler), is also classified as a Pregnancy Category B drug. We believe that budesonide inhalers are an appropriate non-CFC

therapeutic alternative for pregnant women who are currently using Intal Inhalers.

We have no data to suggest that Intal is more effective than the therapeutic alternatives at preventing asthma symptoms triggered by pet allergens. Although we believe that current Intal and Tilade users will be adequately served by the inhaled corticosteroids identified above, we also note the availability of cromolyn sodium in a nebulized solution, which may provide a therapeutic alternative for situations involving planned and known exposures to allergens.

(Comment 3) One comment suggested that the amount of CFCs released from Intal and Tilade Inhalers is inconsequential.

(Response) As we have noted in previous rulemakings, the environmental impact of CFCs used in MDIs, including Intal and Tilade MDIs, must not be evaluated independently, but rather must be evaluated in the context of the overall use of CFCs. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7). Significance cannot be avoided by breaking an action down into small components (40 CFR 1508.27(b)(7)). Currently, MDIs for the treatment of asthma and COPD, including Intal and Tilade, are the only legal use of newly produced or imported CFCs (see EPA 2006 Allocation rule).

Although it may appear to some that the CFCs released from Intal and Tilade MDIs represent insignificant quantities of ODSs, and therefore should be exempted, the elimination of CFC use in MDIs is one of the final steps in the overall phase-out of CFC use. The release of ODSs from some of the MDIs, including Intal and Tilade, may be relatively small compared to total quantities that were released 2 or 3 decades ago, but if each use that resulted in the release of relatively small quantities of ODSs were provided an exemption, the cumulative effect would be to prevent the elimination of ODS releasing products. This would prevent the full phase-out envisioned by the Clean Air Act and the Montreal Protocol.

#### *C. Pirbuterol*

We are removing the essential-use designations for MDIs containing pirbuterol (Maxair Autohaler). Pirbuterol is a short-acting beta<sub>2</sub>-adrenergic agonist used in the treatment of bronchospasm associated with asthma and COPD. Pirbuterol acts as a bronchodilator. Pirbuterol is only

available in a CFC MDI. Maxair Autohaler is one of two beta<sub>2</sub>-adrenergic agonist MDIs currently marketed as a prescription drug which contains CFCs. The other product, Alupent Inhalation Aerosol, is addressed in section IV.A of this document. Albuterol is also a beta<sub>2</sub>-adrenergic agonist, but it is no longer marketed as a CFC MDI. Albuterol was addressed in a separate rulemaking, which removed its essential-use designation effective December 31, 2008. Maxair Autohaler is a prescription drug that was approved on November 30, 1992. Maxair Autohaler's use was considered essential under the 1978 rule, which stated that "[m]etered-dose adrenergic bronchodilator human drugs for oral inhalation" were essential. Pirbuterol was designated as essential as an active moiety in the 2002 rule. Maxair Autohaler has a breath-actuated delivery system.

#### *1. Do Substantial Technical Barriers To Formulating Pirbuterol Products Without ODSs Exist?*

We proposed a finding that there are no technical barriers to formulating pirbuterol MDIs without ODSs (72 FR 32030 at 32037).

(Comment 4) One comment, Graceway Pharmaceuticals, LLC (Graceway), the manufacturer of Maxair Autohaler, states that there are substantial barriers (chemistry, manufacturing, and engineering) to reformulating Maxair Autohaler without ODSs. Graceway also states these barriers are complicated by the breath-actuated system, which is more sensitive with respect to particle size and energy force.

(Response) When determining whether technical barriers to formulating pirbuterol MDIs without ODSs exist, we consider whether all available alternative technologies have been evaluated and whether each alternative is unusable (64 FR 47719 at 47721, September 1, 1999). In addition, we look at results of reformulation efforts for similar products, as well as statements made about the manufacturer's particular efforts to reformulate their product or products. Graceway has not demonstrated that the breath-actuated system is more sensitive with respect to particle size and energy force or explained how any such sensitivity poses a barrier to reformulating Maxair without ODSs. As noted in the proposed rule, the pharmaceutical industry has had success in formulating other orally inhaled beta<sub>2</sub>-adrenergic bronchodilators without ODSs. At least nine different active moieties have been



formulated as HFA MDIs for the treatment of asthma and COPD in the United States and abroad.<sup>11</sup> HFA MDIs have been formulated with both suspensions and solutions. Pirbuterol is a close chemical analog to albuterol and levalbuterol. Given the chemical similarity between them and the success with reformulating albuterol (as albuterol sulfate in ProAir HFA Inhalation Aerosol, Proventil HFA Inhalation Aerosol, and Ventolin HFA Inhalation Aerosol) and levalbuterol (as levalbuterol tartrate in Xopenex HFA Inhalation Aerosol), there appears to be no technical reason why pirbuterol cannot be successfully reformulated into an HFA MDI.

Furthermore, Graceway has not demonstrated that it evaluated all available alternative technologies and found each alternative unusable—the standard described in section III of this document (64 FR 47719 at 47721, September 1, 1999). At the time the proposed rule published, we had no evidence to suggest that the ODS containing pirbuterol oral inhalation drug product posed unique technical challenges to formulation without ODSs. Since the time the proposed rule published, no data have been submitted to change that conclusion. Therefore, after consideration of the public comments on the issue, we conclude that there are no technical barriers to the development of a non-ODS pirbuterol product.

## 2. Do Pirbuterol MDIs Provide an Otherwise Unavailable Important Public Health Benefit?

In the proposed rule we tentatively found that pirbuterol MDIs do not provide an otherwise unavailable important public health benefit (72 FR 32030 at 32037). Because we have reached a conclusion that there are no substantial technical barriers to formulating pirbuterol into a non-ODS product, we do not believe it is necessary to reach a conclusion on the public health benefits of pirbuterol MDIs. However, we received a large number of comments in response to the proposed rule addressing the public health benefits of pirbuterol MDIs, and we believe it is appropriate to address the public health benefits in light of these comments.

<sup>11</sup> The nine moieties formulated as HFA MDIs are albuterol, beclomethasone, budesonide, fenoterol, fluticasone, flunisolide, formoterol, ipratropium, and salmeterol. While a salmeterol DPI (SEREVENT) has been approved in the United States, salmeterol HFA MDIs have only been approved overseas. There are no approved fenoterol or formoterol HFA products in the United States, but fenoterol HFA MDIs and formoterol HFA MDIs have been approved in several foreign countries.

a. *Does Pirbuterol provide a greater therapeutic benefit than similar adrenergic bronchodilators?* (Comment 5) In its comment in response to the proposed rule, Graceway claims that Maxair Autohaler provides important public health benefits that would otherwise be unavailable to substantial numbers of patients who have asthma or COPD. Graceway states that Maxair Autohaler is an alternative for those who do not tolerate or respond to albuterol and levalbuterol. Graceway bases this conclusion in part on the distinct chemical structure of pirbuterol, which Graceway claims is different from albuterol and levalbuterol, and also on variation among patients. In its comment, Graceway presents statements from physicians and patients claiming that many patients experience intolerance or allergic reaction to albuterol, but succeed on pirbuterol. In addition, we received many comments from pirbuterol users and physicians who prescribe pirbuterol, detailing experiences with pirbuterol and alternative MDIs, such as albuterol. The comments describe reactions to and intolerance experienced with albuterol and success with pirbuterol. Furthermore, many of the comments from the physicians and pirbuterol users claim that experience indicates that pirbuterol MDIs are more effective than albuterol MDIs.

(Response) Albuterol and pirbuterol are both short-acting beta<sub>2</sub>-adrenergic bronchodilators. Bronchodilation occurs primarily through stimulation of the beta<sub>2</sub>-adrenergic receptor. Albuterol MDIs are therapeutic alternatives to pirbuterol MDIs and are, by far, the most widely prescribed short-acting bronchodilators. We are not aware of any studies that support the comments' contentions that albuterol inhalers are not an appropriate alternative for pirbuterol inhalers. Moreover, we disagree with the contention that the pirbuterol MDIs provide any unique therapeutic or other advantage over the available alternatives. The labeling for Maxair Autohaler does not contain any superiority claims based on controlled clinical trials and we do not believe that anecdotal evidence is adequate to support such a conclusion.

Four prescription HFA MDIs with two different forms of albuterol are approved and currently available:

- ProAir HFA (albuterol sulfate) Inhalation Aerosol;
- Proventil HFA (albuterol sulfate) Inhalation Aerosol;
- Ventolin HFA (albuterol sulfate) Inhalation Aerosol; and
- Xopenex HFA (levalbuterol tartrate) Inhalation Aerosol.

These products use HFA, which does not affect stratospheric ozone as a replacement for ODSs. Maxair Autohaler and the therapeutic alternatives are all very similar drugs. They are all indicated for the relief of bronchospasms associated with asthma and COPD (although the labeled indications may be worded differently), have very similar safety profiles, and have similar dosing regimens. At least one of the currently available albuterol drug products should be an adequate therapeutic alternative for patients currently using Maxair Autohaler.

We are not aware of any adequate and well-controlled studies which support the comments' views that individuals who do not respond to or tolerate albuterol and levalbuterol would find pirbuterol MDIs more effective or better tolerate pirbuterol, or that pirbuterol MDIs are more effective than other asthma MDIs, including albuterol HFA MDIs. The National Asthma Education and Prevention Program, Expert Panel Report 3 (NAEPP EPR-3) recommends that short-acting beta<sub>2</sub>-adrenergic bronchodilators, in particular albuterol, levalbuterol, and pirbuterol, are the most effective medications for relieving acute bronchospasm. (Ref. 1) The NAEPP EPR-3 does not distinguish pirbuterol as providing any unique therapeutic or other advantage over the available alternatives.<sup>12</sup> Furthermore, the opinion of all PADAC members who voted on the issue was that pirbuterol is no longer an essential use of ODSs (72 FR 32030 at 32037). The studies and literature cited by Graceway in its comment provide cases of non-response or inadequate response to albuterol and levalbuterol. Graceway did not present studies comparing pirbuterol to albuterol or showing that pirbuterol would be more effective for those users who do not respond to or inadequately responded to albuterol. In fact, in its comment (Comment No. 4), Graceway stated that clinical studies have not been conducted to establish whether patients may respond differently to pirbuterol.

<sup>12</sup> In the United States, the generally recognized standard of care for asthma is set forth in the National Heart, Lung, and Blood Institute's National Asthma Education and Prevention Program, Expert Panel Report 3: Guidelines for the Diagnosis and Management of Asthma (EPR-3) (Ref. 2). The National Heart, Lung, and Blood Institute is one of the National Institutes of Health. In the 2007 update, we find the latest updates to the standard. The Guidelines represent best practices and are recognized as the clinical standard of care for treatment of asthma. See, e.g., <http://www.asthmanow.net/care.html>; <http://www.colorado.gov/bestpractices/index.html>; <http://www.doh.wa.gov/CFH/asthma/publications/plan/health-care.pdf>.

As stated previously, if therapeutic alternatives exist for users of the CFC MDI, we can determine that the CFC MDI does not provide an otherwise unavailable important public health benefit. We have carefully considered these comments asserting that Maxair Autohaler is a more effective alternative to other asthma MDIs. However, no data were submitted to the agency as part of this rulemaking, and the agency is not aware of any data that allow us to reach the conclusion that pirbuterol provides a greater therapeutic benefit than similar adrenergic bronchodilators. Thus, we believe that patients will be adequately served by alternative MDIs.

(Comment 6) Graceway also argues that pirbuterol is more likely than albuterol to select beta<sub>2</sub> receptors, which presents less risk of cardiac side effects.

(Response) As stated in response to the previous comment, albuterol and pirbuterol are both short-acting selective beta<sub>2</sub>-adrenergic bronchodilators that achieve bronchodilation primarily through the beta<sub>2</sub>-adrenergic receptor. Therefore, they both bind to the same receptor that causes bronchodilation. The studies Graceway submitted to support the conclusion that pirbuterol is more likely than albuterol to select beta<sub>2</sub>-adrenergic receptors do not demonstrate that there is any difference in clinical efficacy or safety between the two drugs. Moreover, the Maxair Autohaler label warns of the same cardiovascular effects as other inhaled beta adrenergic agonists. The NAEPP EPR-3 states that albuterol, levalbuterol, and pirbuterol are all effective agonists and have few negative cardiovascular effects. Accordingly, we disagree that there is less risk of cardiac side effects with use of pirbuterol MDIs than with use of albuterol MDIs.

b. *Does the breath-actuated device associated with pirbuterol MDIs provide an important public health benefit?*

(Comment 7) Graceway, as well as many other comments, stresses the importance of Maxair Autohaler's breath-actuated device in providing an otherwise unavailable important public health benefit. Many people claim they cannot operate traditional press-and-breathe MDIs. They further claim that it is extremely inconvenient and more challenging to use a traditional press-and-breathe MDI with a spacer device to assist with coordination problems. Because spacers are bulky and less portable, people are less likely to carry them, and because they require additional maintenance, people are less likely to use them. The comments argue that Maxair Autohaler's ease of use, convenience, and portability allow for increased compliance. Graceway argues

that the compliance obstacles will lead to an increase in morbidity, as well as an increase in missed school/work days and physician, hospital, and emergency department visits.

(Response) While some individuals or groups of people may have difficulty operating the alternative MDIs that use traditional press-and-breathe devices, and Maxair Autohaler's Autohaler device may be convenient, there are other options for these individuals and groups to treat their asthma or COPD. We understand the difficulties for certain groups of people, such as young children, older adults, and the physically or mentally disabled, of coordinating inhalation with MDI activation. Learning how to properly maintain medical devices and administer medication is a sometimes difficult, but necessary task for many patients with chronic diseases. It would certainly be more convenient to have available many different devices to meet the individual and distinct needs of every patient group. However, we do not believe that this type of patient convenience provides a basis to conclude that a product provides an otherwise unavailable health benefit. Because therapeutic alternatives exist, use of pirbuterol MDIs is not absolutely necessary to save lives, to reduce or prevent asthma morbidity, or to significantly increase patient quality of life.

The use of spacer devices with alternative products provides options for patient groups who have difficulties coordinating inhalation with MDI operation, allowing them to more satisfactorily use MDIs that do not have a breath-actuated delivery mechanism. A spacer is a device that adds space between the mouthpiece of an MDI and the patient's mouth and is used to increase the effectiveness of an MDI. Some have valves that result in the aerosol from the MDI being briefly held in a reservoir from which the patient subsequently inhales the aerosolized medication. Nebulizers provide another option for individuals or patient groups with coordination problems. Systematic reviews and meta-analyses have suggested that each of the aerosol delivery devices can work equally well in patients who can use them correctly. (Ref. 2) The availability of alternatives for those individuals or patient groups who are unable to operate traditional press-and-breathe devices supports a conclusion that any added convenience of a breath-actuated device for patients who have been prescribed drugs for the treatment of asthma or COPD does not provide an unavailable important public

health benefit within the meaning of 21 CFR 2.125(f)(1)(ii).

Furthermore, we are not removing the breath-actuated delivery mechanism from the market; rather, as a result of this rule, the CFC-propelled pirbuterol may no longer be marketed. Graceway, or another company, may develop a breath-actuated delivery system with pirbuterol or other drugs of the class that do not use CFCs.

(Comment 8) Graceway also claims that it will be more costly to switch to one of the proposed alternatives. Increased costs include higher copayments for branded HFA MDIs, extra visits to health care providers to adjust treatment, purchase of spacers, and the cost of failing to adequately manage asthma or COPD. Graceway contends that the use of alternative MDIs is more costly because Maxair Autohaler contains 400 inhalations per MDI, twice the number of inhalations of alternative MDIs.

(Response) The bases Graceway identifies in support of its argument that it will be more costly to switch from Maxair Autohaler to an alternative MDI are largely invalid. First, Maxair Autohaler, the only marketed pirbuterol drug product, is a branded, rather than a generic, product. The therapeutic alternatives for Maxair Autohaler are also branded products. Therefore the purchase of an alternate branded HFA (hydrofluoroalkane HFA-134a) inhaler would require no greater copayment. Second, for most patients with asthma or COPD who use inhalers, regular doctor visits to adjust treatment plans are routine. There is no reason to believe that patients who use alternative HFA inhalers require any more adjustment in treatment than patients who use pirbuterol inhalers with a CFC propellant. Finally, no data have been presented to demonstrate that the cost of failing to adequately manage asthma or COPD is greater for individuals who use alternative HFA inhalers than for those who use Maxair Autohaler. As discussed in section VI of this rule, we anticipate the price per day of therapy to decrease after patients transition from Maxair to alternative therapies. Nevertheless, some individual patients might face higher costs, perhaps related to the costs of additional copayments associated with fewer numbers of inhalations provided by an alternative MDI.

We recognize that the pirbuterol breath-actuated MDIs may provide some public health benefits; however, nothing in this rulemaking suggests that continued use of these MDIs provides an unavailable important health benefit as previously defined. We do not

believe that we can conclude on the basis of the record in this rulemaking that continued use of Maxair Autohaler is necessary to save lives, to reduce or prevent asthma morbidity, or to significantly increase patient quality of life, particularly given the availability of albuterol MDIs as therapeutic alternatives, and the availability of spacers and nebulizers for use in lieu of breath-actuated MDIs.

In any case, given that we have already found no technical barriers to reformulation of pirbuterol MDIs under § 2.125(g)(2), a finding on the public health benefit issue is not necessary to this rulemaking, and we decline to make a specific finding on that issue in this final rule.

### 3. Does Use of Pirbuterol MDIs Release Cumulatively Significant Amounts of ODSs Into the Atmosphere and Is the Release Warranted Because These MDIs Provide an Otherwise Unavailable Important Public Health Benefit?

As explained in the proposed rule and above, because we have found in this rule that there are no substantial technical barriers to reformulating pirbuterol, we are required to find that the use of the product is not essential, and we do not need to reach a decision on the third criterion in § 2.125(f)(1). Nonetheless, based on the criteria described above and in the proposed rule, the quantity of CFCs used in pirbuterol MDIs is a significant portion of the total quantity of newly manufactured CFCs used, and therefore eventually released, in the United States. Accordingly, we tentatively concluded that any release of CFCs from pirbuterol MDIs is cumulatively significant (72 FR 32030 at 32033, 32034, and 32037). We received comments on the amount of CFCs released into the atmosphere from pirbuterol MDI use.

(Comment 9) Graceway asserts that the use of Maxair Autohaler does not release cumulatively significant amounts of ODSs into the atmosphere, and its de minimis release is warranted in view of the essential health benefits provided by the product. Graceway claims that Maxair Autohaler releases fewer CFCs than other MDIs because it releases fewer CFCs per puff than other MDIs and has a smaller market share. Graceway argues that without calculating the quantity of CFCs released from use of Maxair Autohaler alone, the agency admitted the quantity would, in any event, be minor. Graceway further argues that the agency has not shown how aggregate release of CFCs from all seven moieties has a significant impact on the environment.

(Response) Although we based our tentative conclusion that pirbuterol MDIs release cumulatively significant amounts of ODSs on previous policy statements about the environmental impact of CFCs, the basis for removing the essential-use designation for pirbuterol in this rulemaking is no significant barriers exist to reformulating pirbuterol MDIs without ODSs. We need not reach a conclusion that pirbuterol MDIs release cumulatively significant amounts of ODSs. Furthermore, as discussed previously, it is not necessary for us to reach a conclusion on the public health benefits of Maxair Autohaler, or to conduct the balancing test to reach a determination as to whether the release of CFC ODSs is warranted in view of the public health benefits. Regardless of outcome, the balancing test would not affect the ultimate finding in this rulemaking that, because there are no significant technical barriers to reformulation of the product, pirbuterol is no longer an essential use of ODSs and should be removed from the list of essential uses in § 2.125(e).

### 4. Additional Comments on Miscellaneous Issues

a. *Sufficiency of advisory committee and open public meetings.* (Comment 10) Graceway submitted a number of comments claiming insufficiencies of the two meetings held concerning the proposed rule to remove the essential-use designations of the seven moieties that are the subject of this final rule. Graceway asserts that the Pulmonary and Allergy Drugs Advisory Committee (PADAC) meeting held on July 14, 2005, did not fulfill the 21 CFR 2.125(g)(2) requirement for consultation with an advisory committee because the notice of the meeting did not identify the products and moieties at issue, state that the meeting was intended to fulfill requirements of 21 CFR 2.125(g)(2), or discuss the purpose and scope of the meeting. Therefore, informed views from independent experts could not be obtained because interested persons/companies either had no knowledge of the meeting or had insufficient time to adequately prepare for the meeting. Graceway also asserts that the background memorandum provided to the PADAC was inadequate and that committee members were confused. In addition, Graceway asserts that the agency did not properly consult with the committee members as to the health benefits of the moieties at issue and failed to consider the committee's advice or recognize issues raised by the committee members.

(Response) FDA may remove an essential-use designation under section 2.125(g)(2) if it no longer meets certain criteria after consultation with a relevant advisory committee and after holding an open public meeting. FDA made clear in the 1999 rule proposing criteria for removing essential-use designations that, before removing any essential-use designation, it would consult with an advisory committee and provide opportunity for public comment (64 FR 47719 at 47722). FDA published a notice in the **Federal Register** on May 10, 2005 (70 FR 24605), that the PADAC would be convening on July 14, 2005, to discuss the continued need for the essential-use designations of prescription drugs for the treatment of asthma and COPD. The notice further stated that interested persons could present data, information, or views, orally or in writing, on the issues pending before the committee. This notice provided sufficient time for those persons or companies with an interest in the essential-use designations of any moieties used in drugs that treat asthma or COPD to provide the committee members with any information they believed would be pertinent to the decision to remove a designation.

It was noted at the meeting that the committee was convened to determine whether changes in medical practice and the availability of alternatives render the products listed as essential no longer essential. The background memorandum provided to the PADAC described the regulatory criteria for removing essential uses and advised the committee to focus attention on the criterion related to the important public health benefits of the moieties. The background memorandum also listed those products containing CFCs that were still marketed and for which there were no current reformulations or direct alternative products, and products currently approved or marketed that do not contain CFCs. These lists were provided to assist the committee when considering whether adequate alternative therapy is available. The opportunity to ask clarifying questions was provided at the meeting, and presentations were made by an association representing manufacturers of MDIs, particular MDI manufacturers, and an interested person. Therefore, we disagree with the assertion that informed views from independent experts could not be or were not obtained.

After the presentations, the committee discussed the individual moieties, including pirbuterol, with regard to their essentiality. A majority of the members agreed that pirbuterol is

nonessential. The transcript of the meeting, available at <http://www.fda.gov/ohrms/dockets/ac/cder05.html#PulmonaryAllergy>, does not reveal any confusion on the part of the committee members. In the proposed rule, we stated that we consulted with the PADAC at their July 14, 2005, meeting on the essential-use status of MDIs containing, among other moieties, pirbuterol, and that the PADAC members gave their opinions, without dissent, that pirbuterol was no longer an essential use of ODSs (72 FR 32030 at 32035, 32037). Thus, FDA has taken full consideration of the opinions of the committee members.

(Comment 11) Graceway asserts that the agency failed to meet the spirit of the 21 CFR 2.125(g)(2) public meeting requirement to enrich notice-and-comment rulemaking. Graceway stated that scheduling the meeting with less than 3 weeks' notice, the lack of publicity, and the decision to hold a single meeting in one location were barriers to participation by patients, clinicians, and outside experts. Graceway also stated that the agency failed to solicit feedback on patients' experience with HFA alternatives and thus limited the scope of the administrative record.

(Response) FDA published a notice in the **Federal Register** on July 9, 2007 (72 FR 37137), that the public meeting would be held on August 2, 2007, at FDA's Center for Drug Evaluation and Research Advisory Committee conference room in Rockville, MD. The notice stated that the meeting was to solicit comments on the proposed rule amending the regulation on the use of ODSs to remove the essential-use designations for certain MDIs, and invited written or electronic comments for consideration at the meeting, as well as requests to speak at the meeting. We believe we provided sufficient notice of the meeting to allow for widespread participation and did not create barriers to participation by patients, clinicians, and outside experts. Accordingly, we disagree with Graceway's implication that the agency did not comply with the regulatory requirement for an open public meeting. Furthermore, in the proposed rule, we solicited any comments related to the removal of the essential-use designations for MDIs containing pirbuterol and other moieties, and in the notice of the public meeting we invited discussion of issues on which we asked for comments in the proposed rule. In fact, we received thousands of comments on patients' experiences with HFA alternatives to pirbuterol in particular. Therefore, we strongly disagree that the scope of the

administrative record was limited in any way.

b. *Sufficiency of proposed rule.* (Comment 12) Graceway argues that FDA failed to publicize the proposed rule through a press release, public announcement, or on the Internet, and inhibited public participation in the rulemaking process.

(Response) Interested persons have had ample notice that FDA was considering removing the essential-use designation for pirbuterol and the six other drugs that are the subject of this rulemaking. This issue was first considered at the July 14, 2005, PADAC meeting (see 70 FR 24605). The trade press reported on this meeting, and minutes and a transcript of the meeting were placed on the Internet and are available at <http://www.fda.gov/ohrms/dockets/ac/cder05.html#PulmonaryAllergy>. We also announced our intention to publish a proposed rule in the unified agendas published in the **Federal Register** on December 11, 2006 (71 FR 73195 at 73223), and April 30, 2007 (72 FR 22489 at 22516). As stated previously, we published the proposed rule in the **Federal Register** on June 11, 2007 (72 FR 32030). These publications put the public on notice of our intent to remove the essential-use designations, and invited comments on our proposal. In addition, we held an open public meeting, as discussed previously, for which we solicited input from interested parties. Several companies, including Graceway, gave presentations at the open public meeting. Furthermore, our MDI Web site, <http://www.fda.gov/Drugs/DrugSafety/InformationbyDrugClass/ucm063054.htm>, discusses the phase-out of all essential use designations and contains copies of all relevant documents, including the June 11, 2007, proposed rule. Our receipt of thousands of comments on the proposed rule further shows that the public was well aware of our intent to remove the essential-use designations and that public participation was not inhibited.

(Comment 13) Graceway also argues that FDA must give weight to the quality and quantity of comments submitted in response to the proposed rule because the number of comments is material where the degree of public interest is a legitimate factor for consideration. Graceway states that with regard to this rule, input from patients, physicians, and pharmacists is crucial because the decision-making involves weighing important and competing public policy considerations.

(Response) We have given due weight and full consideration to all comments submitted in response to the proposed

rule. We have read each comment individually and provided responses to all unique comments submitted. When comments were duplicative in substance, we provided one response to all like comments. We fully understand the concern with removal of the essential-use designations and have weighed the public policy considerations, as discussed previously. After weighing the important and competing public policy considerations, and considering the nature and number of comments, we have concluded that the public is best served by the decision to remove the essential-use designations that are the subject of this rule.

(Comment 14) Graceway asserts that FDA's failure to create a confidential docket prevented companies from commenting on issues related to development of non-ODS formulations of pirbuterol.

(Response) There is no provision in our regulations for creating a confidential docket. As we commented previously with regard to technical barriers, the pharmaceutical industry has had success in formulating other orally inhaled beta<sub>2</sub>-adrenergic bronchodilators without ODSs. Given the chemical similarity between the moieties used in these other bronchodilators and pirbuterol, and the success with reformulating albuterol and levalbuterol, there appears to be no technical reason why pirbuterol cannot be successfully reformulated into an HFA MDI or other non-ODS inhalation delivery system. Moreover, Graceway could have readily provided general comments related to development of a non-ODS delivery system.

(Comment 15) Graceway stated that FDA's concerns over the availability of CFCs beyond 2009 are more properly addressed through negotiation at Montreal Protocol meetings, rather than through removal of essential-use designations.

(Response) As a Party to the Montreal Protocol, the United States Government committed to eliminating all non-essential uses and reducing essential uses of CFCs. The Preamble to the Protocol states that the Parties are: "Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, *with the ultimate objective of their elimination*" (Preamble to the Montreal Protocol (emphasis added.)). FDA's actions in this rulemaking are consistent with the United States' position in meetings regarding the Montreal Protocol. Discussion of the United States' position with regard to the Montreal Protocol is more appropriately directed to the

Department of State, which heads the United States delegation to meetings regarding the Montreal Protocol. If any company wants the United States to alter any of the positions taken with the Parties to the Protocol, it should present its views to appropriate officials in the State Department.

*c. Regulatory Flexibility Act.*

(Comment 16) Graceway asserts that FDA erroneously concluded that none of the firms that manufacture the seven CFC MDIs is a small entity under the Regulatory Flexibility Act because none employs fewer than 750 people, and therefore the proposed rule would not have a significant economic impact on a substantial number of small entities. Graceway states that it is a small entity because it employs fewer than 750 people. It also claims that it constitutes a significant number of small entities because Graceway makes up more than 5 percent of the total number of affected entities (the five NDA holders for prescription CFC MDI products) and 100 percent of the affected small entities. Graceway also states that the rule would have a significant economic impact on it because Maxair comprises 15 percent of Graceway's U.S. revenues.

(Response) As explained in our Regulatory Flexibility Analysis (see section VII), for purposes of determining whether a substantial number of small entities are affected by this rule, the affected industry sector includes all manufacturers of pharmaceutical products in the United States. The effects of this final rule are not limited to the five NDA holders who are marketing the seven ODS drug products. Thus, the industry sector which will be directly affected by this rule includes all U.S. "pharmaceutical preparation manufacturers." The same industry sector was considered to be affected by the Albuterol final rule (70 FR 17191, April 4, 2005).

According to the U.S. Department of Commerce, the industry of "pharmaceutical preparation manufacturers" includes 901 establishments controlled by 723 companies (Ref. 3). Of these establishments, 822 have fewer than 500 employees. Only one of these companies, Graceway, has claimed that it is a small business and that the rule will cause it substantial economic harm. We do not need to determine if Graceway is in fact a small business, because even if it is, one single small affected entity among an industry of hundreds does not constitute a "substantial number" under the Regulatory Flexibility Act. Department of Health and Human Services

Guidance<sup>13</sup> defines "substantial number" as 5 percent or more of the affected small entities within an identified industry. Graceway does not constitute 5 percent of the small entities in the "pharmaceutical preparation manufacturers" sector.

Because this rule would not affect a substantial number of small entities, we do not need to determine whether it would have a significant economic impact upon Graceway. Thus, we continue to believe that this rule would not have a significant economic impact on a substantial number of small entities and decline to reverse our previous determination under the Regulatory Flexibility Act.

*d. National Environmental Policy Act.* (Comment 17) Graceway asserts that FDA erroneously concluded that the rule would not have a significant adverse impact on the human environment. Graceway states that HFA alternatives to Maxair Autohaler and the overall shift of the market to HFA products have a significant global warming impact. Consequently, Graceway claims that FDA must provide evidence and analysis in support of its determination not to prepare an environmental impact statement. In particular, it maintains that FDA must discuss the impact of the proposed action and alternative approaches.

(Response) Therapeutic alternatives that do not use an ODS are currently marketed and appear to provide all of the important public health benefits of the listed drugs. These alternatives generally use HFC-134a (CH<sub>2</sub>FCF<sub>3</sub>), or, to a lesser degree, HFC-227ea (C<sub>3</sub>HF<sub>7</sub>) as a propellant. While HFC-134a and HFC-227ea are greenhouse gases (the global warming potentials (GWPs) are around 1300 GWP<sup>14</sup> and 2600 GWP, respectively),<sup>15</sup> the CFCs that were previously used are ozone disrupting compounds that have much higher global warming potentials of 5000 to

11,000.<sup>16</sup> In addition, considering the density of the HFC propellant is about 30 percent lower than for the CFC propellant, on a mass basis, the quantities emitted are reduced by 30 percent (Ref. 4).

Considering this data, we concluded that there will be an overall improvement in the levels of potent greenhouse gases released annually from the use of oral pressurized MDIs as a result of this action. Therefore, the removal of the essential-use designations results in a net improvement on the environmental effects of the use of these devices. Because there is no net negative environmental impact of this action, alternative actions will not be addressed. We encourage the development of new forms of propellants with even lower GWPs, as well as other delivery possibilities, but in the absence of such alternatives we reaffirm the removal of the essential-use designations for CFC-propelled MDIs as an environmentally sound action.

*D. Albuterol and Ipratropium in Combination*

We are removing the essential-use designations for MDIs containing albuterol sulfate and ipratropium bromide in combination (Combivent Inhalation Aerosol).<sup>17</sup> Combivent Inhalation Aerosol is a prescription drug. Albuterol is a beta<sub>2</sub>-adrenergic bronchodilator and ipratropium is an anticholinergic bronchodilator. Both are used in the treatment of bronchospasm associated with COPD. The primary advantage of using the two drugs in combination is that by using two distinctly different mechanisms of action, the two drugs in combination should produce greater bronchodilator effect than using either drug alone. The essential use for MDIs containing albuterol sulfate and ipratropium bromide in combination was added to § 2.125(e) in the **Federal Register** of April 9, 1996 (61 FR 15700). Albuterol and ipratropium, in combination, are also sold as an inhalation solution (DuoNeb Inhalation Solution) for use in a nebulizer. Nebulizers do not use CFCs. This current rulemaking will not affect the regulatory status of DuoNeb Inhalation Solution.

<sup>13</sup> Guidance on Proper Consideration of Small Entities in Rulemakings of the U.S. Department of Health and Human Services (May 2003).

<sup>14</sup> GWP: Global warming potential; represents how much a given mass of chemical contributes to global warming over a given time period compared with the same mass of carbon dioxide (GWP = 1). It is defined as the ratio of the time-integrative radiative forcing from the instantaneous release of 1 kg of a trace substance relative to that of 1 kg of a reference gas (in most cases CO<sub>2</sub>). All GWP values represent global warming potential over a 100-year time horizon.

<sup>15</sup> U.S. Environmental Protection Agency, Global Warming Potentials of ODS Substitutes: <http://www.epa.gov/Ozone/geninfo/gwps.html>. Accessed 5/21/2009.

<sup>16</sup> U.S. Environmental Protection Agency, Class I Ozone-depleting Substances: <http://www.epa.gov/Ozone/science/ods/classone.html>. Accessed 5/21/2009.

<sup>17</sup> As noted in the proposed rule, we have received a citizen petition from Boehringer Ingelheim Pharmaceuticals, Inc. (BI) (Docket No. 2006P-0428/CP1). The petition asks us to refrain from taking any action to remove the essential-use designation for Combivent Inhalation Aerosol. We have treated the petition as a comment on this proposal.

1. Do Substantial Technical Barriers to Formulating Products Containing Albuterol and Ipratropium in Combination Without ODSs Exist?

In the proposed rule, we noted that we had not been supplied with any information to support a conclusion that substantial technical barriers exist and could not make an initial determination on whether such barriers exist. We received several comments about technical barriers to reformulating Combivent Inhalation Aerosol without CFCs, one of which provided additional information about Combivent Inhalation Aerosol's reformulation efforts.

(Comment 18) In its comment in response to the proposed rule, Boehringer Ingelheim Pharmaceuticals, Inc. (BI), argues that substantial technical barriers have hampered the development of a CFC-free Combivent Inhalation Aerosol. Specifically, BI notes that Combivent Inhalation Aerosol's combination of two active ingredients with different physico-chemical properties presents unique challenges for formulating a Combivent HFA Inhalation Aerosol, including the development of different valves and materials for the HFA product. According to BI, significant problems arose during the clinical trial phase, including clogging and valve sticking. In addition, multiple formulations have been developed. BI also provides more detailed information on its current progress in developing a non-HFA CFC-free Combivent. Specifically, BI stated that it anticipated filing an NDA for Combivent Respimat at the end of 2008, permitting FDA review and approval to be completed by 2010 or 2011.

(Response) We have carefully reviewed the information provided by BI on its reformulation efforts. We have considered whether all available alternative technologies have been evaluated and whether each alternative is unusable. The information available to the agency suggests that viable alternatives exist or are in development. BI representatives stated at the Public Meeting in August 2007 and BI stated in its comment to the proposed rule that it is in the process of developing Combivent Respimat. BI's comments suggest that they anticipate being ready to commercially produce and legally distribute, and have the capacity to meet current market demand for, a non-CFC alternative Combivent product by 2011. In addition, BI's actions to date indicate that it has overcome difficulties in chemistry and manufacturing as it has developed and tested a Combivent Respimat product (see [clinicaltrials.gov](http://clinicaltrials.gov) at Respimat Combivent Trial in Chronic

Obstructive Pulmonary Disease (COPD), [ClinicalTrials.gov](http://ClinicalTrials.gov) identifier #NCT00400153 (completed April 2008)). We also note that both albuterol and ipratropium bromide have been successfully reformulated as non-CFC products. We believe that the success of BI's reformulation efforts to date demonstrates that although difficulties may have been encountered, they do not pose a substantial barrier to reformulating as described in section III of this document. Therefore, we conclude that substantial technical barriers to the development of a non-CFC combination albuterol and ipratropium product do not exist.

2. Do MDIs Containing Albuterol and Ipratropium in Combination Provide an Otherwise Unavailable Important Public Health Benefit?

In the proposed rule, we solicited comments on the public health benefits of Combivent Inhalation Aerosols (72 FR 32039). We tentatively concluded that Combivent Inhalation Aerosol does not provide an otherwise unavailable public health benefit and based this tentative conclusion on our tentative determination that an ipratropium bromide HFA MDI used with an albuterol sulfate HFA MDI would provide an acceptable therapeutic alternative to Combivent Inhalation Aerosol. Because we have reached a conclusion that there are no substantial technical barriers to formulating Combivent Inhalation Aerosol into a non-ODS product, we do not believe it is necessary to reach a conclusion on the public health benefits of Combivent Inhalation Aerosol. However, we sought and received multiple comments in response to the proposed rule addressing the public health benefits of Combivent Inhalation Aerosol, and we believe it is appropriate to address the public health benefits in light of these comments.

(Comment 19) For a number of reasons, BI disagrees with our tentative conclusion that Combivent Inhalation Aerosol does not provide an otherwise unavailable important public health benefit. BI claims that Combivent Inhalation Aerosol users are elderly and have COPD and co-morbid conditions, making them an especially vulnerable population. BI asserts that noncompliance is a significant problem among this population because many users have multiple medical conditions requiring multiple medications. According to BI, switching Combivent Inhalation Aerosol users to two separate inhalers would decrease compliance, increase medication errors due to incorrect administration, and increase

treatment delays due to patient confusion over which inhaler to use. BI explains that compliance might decrease because ipratropium bromide has a longer onset of action, and patients may perceive a lack of efficacy if ipratropium bromide is administered separately from albuterol, which would lead patients to either overuse the product or not use it at all. BI also argues that some patients with COPD suffer from hyperinflation of the lungs, which makes it more difficult to take the deep breaths required for optimal dosing of medications, and doubling the number of inhalations to approximate the same therapeutic effect of Combivent Inhalation Aerosol would significantly increase the burden on the patient. We also received comments from patients who claim that using two inhalers would be too bulky. Several other comments raise similar concerns about compliance, and one comment raises these concerns with respect to patients with cystic fibrosis. Our response below addresses all such comments.

(Response) We believe that the ipratropium bromide HFA MDI and the albuterol sulfate HFA MDI, when used together, provide similar therapeutic benefits to Combivent Inhalation Aerosol. Using the two MDIs together will deliver the same dose of ipratropium (18 micrograms (mcg) per inhalation) and essentially the same dose of albuterol (108 mcg versus 103 mcg per inhalation) as the dose delivered by Combivent Inhalation Aerosol. As we noted in the proposed rule, the primary advantage of using the two drugs in combination is that by using two distinctly different mechanisms of action (albuterol is a beta<sub>2</sub>-adrenergic bronchodilator while ipratropium bromide is an anticholinergic bronchodilator), the two drugs in combination should produce greater bronchodilator effect than using either drug alone. Combivent Inhalation Aerosol is a combination of convenience that is intended to facilitate patient use of the two drug products together.

Although it is not necessary for this rulemaking to evaluate whether the non-CFC therapeutic alternative has approximately the same level of convenience as the product it replaces, the analysis may be useful in light of the comments. As we stated in the 2002 rule, "in evaluating whether an alternative has approximately the same level of convenience of use compared to the ODS product containing the same active moiety, FDA will consider whether: (1) The product has approximately the same or better portability; (2) the product requires

approximately the same amount of or less preparation before use; and (3) the product does not require significantly greater physical effort or dexterity” (67 FR 48370 at 48374).

The proposed non-CFC alternatives to Combivent Inhalation Aerosol, an ipratropium bromide HFA MDI used with an albuterol sulfate HFA MDI, are MDIs like Combivent Inhalation Aerosol and are similarly portable. Both the CFC product and the HFA products require priming if they have not been used for a period of time, and therefore both products require approximately the same amount of preparation. We note that priming is only required when the product has not been used for a period of time. Because these inhalers are intended for daily use, we do not anticipate that regular priming would be necessary. And although twice as many puffs are required to deliver the dose of separate albuterol and ipratropium bromide into the lungs, the additional puffs do not require significantly greater physical effort or dexterity. In addition, we have not found any data to suggest that administering twice the number of puffs would be a significant burden for patients with hyperinflation. We acknowledge that carrying two inhalers is twice as bulky as carrying one, and some patients may find Combivent Inhalation Aerosol more convenient to use, but we believe that the therapeutic alternatives are only marginally less convenient, and any convenience provided by the availability of Combivent Inhalation Aerosol does not reach the level of essentiality.

We also acknowledge that some patients, particularly those with comorbid conditions who are taking multiple medications, may be more compliant when using a Combivent Inhalation Aerosol than when using an ipratropium bromide HFA MDI with an albuterol sulfate HFA MDI. We believe that concerns about patient compliance can be appropriately addressed with patient outreach campaigns that provide education on how to use HFA MDIs correctly and the benefits of using both MDIs together. As we have stated elsewhere in this document, learning how to properly maintain and administer medications is a sometimes difficult, but necessary, task for many patients with chronic diseases. During the transition period, we intend to conduct this type of patient outreach campaign, and we encourage other stakeholders to work with us in educating Combivent Inhalation Aerosol users on the therapeutic alternatives. Because patient compliance may be greater with combination products such as Combivent Inhalation Aerosol, we

intend to closely monitor the availability of any reformulated combination MDI product and the transition to the therapeutic alternatives identified in this rule, including albuterol and ipratropium delivered in single-ingredient MDIs, and modify the patient outreach efforts as appropriate.

(Comment 20) BI and other comments also argue that a decrease in compliance would lead to increased exacerbations and an increase in overall health care costs.

(Response) In one nonrandomized retrospective study comparing use of two separate inhalers to use of Combivent Inhalation Aerosol, Chrischilles et al. concluded that Combivent Inhalation Aerosol users were more compliant and had significantly lower average monthly health care costs compared to users of two separate inhalers (Ref. 5). Although the validity of the results depends on the authors’ ability to control for important differences in the patient populations, we do not disagree with the conclusion that using two inhalers may be more expensive than using one combination inhaler, and we have identified and assessed those costs in our Analysis of Impacts.

(Comment 21) BI further argues that the proposed CFC-free therapeutic alternatives to Combivent Inhalation Aerosol (an ipratropium bromide HFA MDI used with an albuterol sulfate HFA MDI) have not been shown to provide similar therapeutic benefits. One comment claims that clinical studies have shown that a single inhaler of Combivent Inhalation Aerosol is more effective for the treatment of COPD than two separate inhalers. Several comments oppose the market removal of Combivent Inhalation Aerosol, arguing the combination of two medications that must be taken separately is not a substitute for the single product, Combivent Inhalation Aerosol.

(Response) As stated earlier, using the two MDIs together will deliver the same dose of ipratropium (18 mcg per inhalation) and essentially the same dose of albuterol (108 mcg versus 103 mcg per inhalation) as the dose delivered by Combivent Inhalation Aerosol. We are not aware of any data demonstrating that Combivent Inhalation Aerosol is clinically superior to an ipratropium bromide HFA MDI used with an albuterol sulfate HFA MDI. Other than the study by Chrischilles discussed earlier, most of the data cited by BI refers to older studies that did not study albuterol and ipratropium in combination inhalers. And as discussed earlier, we acknowledge that use of a combination inhaler may increase

compliance, but we believe compliance can be increased with proper patient education, and we do not consider this factor to be determinative of public health benefit.

Neither the Chrischilles study nor any other study available to us or cited by BI demonstrates that Combivent Inhalation Aerosol is clinically superior to the two inhalers used together. We believe that the ipratropium bromide HFA MDI and the albuterol sulfate HFA MDI used together provide similar therapeutic benefits to the Combivent Inhalation Aerosol. We also note that albuterol and ipratropium bromide in combination are also available as an inhalation solution for use in a nebulizer (marketed as DuoNeb Inhalation Solution). DuoNeb Inhalation Solution is an option for patients who prefer a combination drug product. The availability of these therapeutic alternatives supports a conclusion that Combivent Inhalation Aerosol does not provide an otherwise unavailable important public health benefit.

### 3. Does Use of MDIs Containing Albuterol and Ipratropium in Combination Release Cumulatively Significant Amounts of ODSs Into the Atmosphere and Is the Release Warranted Because These MDIs Provide an Otherwise Unavailable Important Public Health Benefit?

As explained in the criteria in section III of this document, because we have found in this rule that there are no substantial technical barriers to reformulating Combivent Inhalation Aerosol, we are required to find that the use of Combivent Inhalation Aerosol is not essential, and we do not need to reach a decision on the third criterion in § 2.125(f)(1). However, we received several comments about this criterion, which we address below.

(Comment 22) BI argues that removing Combivent Inhalation Aerosol from the market would not significantly decrease the cumulative release of CFCs into the atmosphere and would have a negligible effect on the recovery of the stratospheric ozone layer. They also argue that any effect would not outweigh treatment disruption, health risks, and costs to Combivent Inhalation Aerosol users as a result of the market removal. According to BI, Combivent Inhalation Aerosol usage is expected to account for approximately 175 to 200 metric tons of annual CFC emissions in the coming years. Several comments assert that the amount of ODSs released from Combivent Inhalation Aerosol is insignificant, and eliminating their use would not provide a significant environmental benefit.



(Response) As we stated in the proposed rule and elsewhere in this document, the environmental impact of individual uses of nonessential CFCs must be evaluated in the context of the overall use of CFCs. The quantity of CFCs released from Combivent Inhalation Aerosol represents a significant portion of the total quantity of CFCs released from MDIs in the United States. FDA has not been assigned the task of determining what amount of environmental benefit would result from the removal of CFC-containing medical devices, diagnostic products, drugs, and drug delivery systems from the market. FDA is required to determine whether such products are essential uses of ODSs, and this rulemaking fulfills that obligation with respect to Combivent Inhalation Aerosol.

(Comment 23) BI argues that the proposed rule did not provide data or analysis demonstrating the amount of CFCs which constitutes a significant release. BI also comments that the criterion under the essential-use regulation was established to determine an individual product's release and its effect on the ozone layer, not whether it is significant relative to the release from other products. BI argues that our standard for determining whether a product releases significant amounts of ODSs into the atmosphere is not supported by science and should be developed in accordance with notice-and-comment rulemaking procedures.

(Response) We do not agree that the proposed rule did not provide data or analysis demonstrating the amount of CFCs which constitutes a significant release. We also disagree that our standard is not science-based or was developed without the opportunity for public comment. In reaching our tentative conclusion in the proposed rule that any release of CFCs from Combivent Inhalation Aerosol is cumulatively significant, we discussed our reasoning at length and cited multiple policy statements and other sources in support of our conclusion. We also solicited and received comments on our tentative conclusion. Through previous legislative and administrative actions, the United States has evaluated the environmental effect of eliminating the use of all CFCs and has made a decision to fully phase out the use of CFCs over time. Our conclusion that any release is cumulative is based on these legislative and administrative actions and reflects environmental science policies that have been developed over time through a public process.

(Comment 24) A few comments claim that CFCs used in Combivent Inhalation Aerosol do not have an adverse impact on the environment because the CFCs are inhaled rather than released into the environment.

(Response) As we have noted in previous rulemakings, nearly all of the CFCs inhaled into the lungs from an MDI are almost immediately exhaled into the environment (70 FR 17168 at 17179, April 4, 2005; 73 FR 69532 at 69540, November 19, 2008). The small amounts of CFCs absorbed into the body are later excreted and exhaled without being broken down. Essentially all of the CFCs released from an MDI end up in the atmosphere with resulting harm to the stratospheric ozone layer.

(Comment 25) One comment argues that the CFCs released from Combivent Inhalation Aerosol are less damaging to the ozone layer than the fumes from one diesel truck.

(Response) This comment appears to confuse CFCs with other greenhouse gases such as carbon dioxide and nitrous oxide. FDA's regulations at 21 CFR 2.125 reflect an international effort to reduce the production, importation, and use of substances that deplete the ozone layer. We are publishing this rule because the criteria in § 2.125 have been met, rather than because of any contribution CFCs may be making towards global warming.

(Comment 26) Another comment suggests FDA retain the essential-use designation for Combivent Inhalation Aerosol and instead remove other inhalants, such as aerosol hair sprays, spray paint, and perfumes.

(Response) The use of CFCs in cosmetics such as aerosol hair sprays, deodorant, shaving cream, and perfume was banned in 1978, along with the use of CFCs in spray paint, and household, food and automotive products.

#### 4. Additional Comments on Miscellaneous Issues

##### a. *Criteria used in rulemaking.*

(Comment 27) BI argues that the criteria in 21 CFR 2.125(g)(3)(ii), (g)(3)(iii), (g)(3)(iv), and (g)(4)(ii)<sup>18</sup> should be

<sup>18</sup> Included in 21 CFR 2.125(g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) are some of the criteria for removing an essential-use designation for individual active moieties marketed as ODS products and represented by one new drug application. They require, among other criteria, that supplies and product capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need; adequate U.S. postmarketing data are available for the non-ODS product; and patients who medically require the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products. Section 2.125(g)(4)(ii) incorporates these criteria by cross-reference and requires that they be met prior to removing the essential-use designation

applied to any proposed CFC-free replacement. According to its comment, ignoring or failing to fully consider these criteria could result in patients being switched to "therapeutically inferior" alternatives. At a minimum, BI argues that this rulemaking should incorporate the analysis used in the albuterol rulemaking.

(Response) The criteria in § 2.125(f)(1) we are using in this rulemaking, as cross-referenced in § 2.125(g)(2), are different from those in the albuterol rulemaking. Although the analysis used here is not identical to that used under § 2.125(g)(4) in the albuterol rulemaking, in both the albuterol rulemaking and this rulemaking, the primary focus is on determining whether acceptable alternatives exist for the products that are marketed under the essential use. Section 2.125(g)(2) permits FDA to remove an essential use even if there are no alternatives available with the same active moiety provided that sufficient alternative products with different active moieties exist to meet the needs of patients, because the essential use would then no longer provide an otherwise unavailable important health benefit. In the case of Combivent Inhalation Aerosol, both active moieties have been reformulated without CFCs, and FDA disagrees that the albuterol HFA MDI and the ipratropium bromide HFA MDI are therapeutically inferior to Combivent Inhalation Aerosol. As stated earlier, we find them to be therapeutically equivalent, and we believe the two MDIs used together will meet the needs of current Combivent Inhalation Aerosol users.

b. *Intent to reformulate.* (Comment 28) BI argues that removing Combivent Inhalation Aerosol's essential-use designation before a replacement can be developed preempts BI's good faith efforts to reformulate (a requirement under the Montreal Protocol).

(Response) Nothing about this decision precludes BI from reformulating. A reformulated product can be approved at any time after FDA has determined an NDA meets approval standards. Based on BI's assertions, it is possible a replacement will be available prior to the effective date of this rule for Combivent Inhalation Aerosol.

c. *Deadline for overall CFC phase-out.* (Comment 29) BI comments that the Montreal Protocol and the Clean Air Act do not set a firm deadline for the phase-out of CFC usage in MDIs, and FDA should exercise greater flexibility in its essential-use rulemakings.

for individual active moieties marketed as ODS products that are represented by two or more NDAs.



(Response) As stated in the 2002 final rule, we reviewed the text of the Clean Air Act, its legislative history, the text of the Montreal Protocol, and decisions by the Parties to the Protocol. FDA also further discussed its understanding of the Clean Air Act and the Protocol with the EPA. The Clean Air Act does not state specifically whether such essential-use exemptions may continue indefinitely or must terminate at some future time. However, the legislative history for section 604(d)(2) of the Clean Air Act makes clear that the exemption is only permitted for a limited time. Specifically, the Senate Conference Report for this section of the Clean Air Act states: The centerpiece of the stratospheric ozone protection program established by this title is the phase-out of production and consumption of all ODSs (136 Cong. Rec. S16895 at 16946 and 16947 (daily ed. Oct. 27, 1990)). These statements are consistent with the Montreal Protocol. The Preamble to the Protocol states that the Parties are: Determined to protect the ozone layer by taking precautionary measures to control equitably total global emissions of substances that deplete it, *with the ultimate objective of their elimination* (Preamble to the Montreal Protocol (emphasis added)). Decision IV/25 of the Parties to the Protocol also indicates that essential-use exemptions are temporary. This decision asks the Technology and Economic Assessment Panel to determine an estimated duration for each essential use, the steps necessary to ensure alternatives are available as soon as possible, and whether previously qualified essential uses should no longer qualify as essential. Thus, although it is true that there is no set date for termination of essential-use exemptions, it is also clear that the exemptions were intended to be limited in number and duration and were not intended to exist forever.

d. *Sufficiency of advisory committee meeting.* (Comment 30) BI argues that little public notice was provided for the 2005 PADAC meeting and the notice contained little guidance on public participation and did not seek specific public input. BI also argues that the straw poll conducted at the PADAC meeting did not take into account the status of BI's CFC-free Combivent development programs. BI claims that had the PADAC members been provided a more complete record upon which to base their opinions, a majority would have recommended continuation of Combivent Inhalation Aerosol's essentiality and rejected the proposed therapeutic alternatives.

(Response) As stated earlier in this document, FDA, after consultation with

a relevant advisory committee and after holding an open public meeting, may remove an essential-use designation under section 2.125(g)(2) if it no longer meets certain criteria. FDA made clear in the 1999 rule proposing criteria for removing essential-use designations that before removing any essential-use designation, it would consult with an advisory committee and provide opportunity for public comment (64 FR 47719 at 47722). FDA published a notice in the **Federal Register** on May 10, 2005 (70 FR 24605), that the PADAC would be convening on July 14, 2005, to discuss the continued need for the essential-use designations of prescription drugs for the treatment of asthma and COPD. The notice further stated that interested persons could present data, information, or views, orally or in writing, on the issues pending before the committee. This notice provided sufficient time for those persons or companies with an interest in the essential-use designations of any moieties used in drugs that treat asthma or COPD to provide the committee members with any information they believed would be pertinent to the decision to remove or continue a designation. Therefore, we disagree with the assertion that little public notice was provided for the 2005 PADAC meeting and the notice contained little guidance on public participation and did not seek specific public input.

We also disagree with the assertion that PADAC members were not provided a complete record upon which to base their opinions. At the PADAC meeting, an FDA representative made a detailed presentation to committee members on the Montreal Protocol and the essential-use process and rulemakings, including identification and description of the current essential uses and their therapeutic alternatives, as well as the criteria for removing the essential-use designations. After the FDA presentation, committee members had the opportunity to ask clarifying questions, and additional presentations were made by an association representing manufacturers of MDIs, specific MDI manufacturers, and an interested person. Committee members had additional time to discuss the individual moieties after these presentations were made. We believe that the record demonstrates the PADAC was provided ample information on which to render a vote.

#### E. *Effective date*

In the proposed rule, we proposed an effective date for removal of the essential-use designations for all seven moieties of December 31, 2009, and we

solicited comments on this proposed effective date. We noted in the proposed rule that, depending on the data presented to us during the course of the rulemaking, we may determine that it is appropriate to have different effective dates for different uses.

We did not receive any substantive comments on the proposed effective date for metaproterenol and nedocromil. Alupent Inhalation Aerosol and Tilade Inhaler have been discontinued by BI and King Pharmaceuticals, Inc., respectively. BI has informed us that any Alupent Inhalation Aerosols that may be in retail or wholesale stocks will have passed their expiration date by December 2009. Accordingly, we have determined that the appropriate effective date for the removal of the essential-use designations for metaproterenol and nedocromil is June 14, 2010.

We did not receive any substantive comments on the proposed effective date for triamcinolone, and cromolyn. To allow an adequate length of time for patients to transition to the therapeutic alternatives identified in this rule, we have determined that December 31, 2010, is an appropriate effective date for removing the essential-use designations for triamcinolone and cromolyn. The additional period ensures more time to disseminate information about the phase-out to patients to ensure an orderly transition that is protective of public health.

We received one comment regarding the effective date for flunisolide from Forest Laboratories, Inc., the exclusive distributor for Aerobid (flunisolide) Inhaler System via a licensing agreement with Roche Palo Alto, the NDA holder for Aerobid. Forest requests an 18-month delay in the effective date of the rule. In its comment, Forest states that a June 30, 2011, effective date would allow time for Forest to commercially produce and market its non-CFC flunisolide formulation, Aerospa Inhalation Aerosol. We have considered this request and have determined that a June 30, 2011, effective date is appropriate for removing the essential-use designation for flunisolide. The June 30, 2011, effective date will provide sufficient time for current Aerobid Inhaler System users to transition to the therapeutic alternatives including Aerospa Inhalation Aerosol. We also note that the June 30, 2011, effective date provides sufficient time for Forest to prepare for commercial distribution of Aerospa Inhalation Aerosol.

We received several comments on the effective date for Combivent Inhalation Aerosol and Maxair Autohaler. After

considering the comments, we were persuaded that December 31, 2013, rather than December 31, 2009, as proposed, is a more appropriate effective date for removing the essential-use designations for Combivent Inhalation Aerosol and Maxair Autohaler. The December 31, 2013, date provides additional time to disseminate information about the transition to Combivent Inhalation Aerosol and Maxair Autohaler users who may have multiple health conditions that may make it more difficult to transition, and allows these individuals more time to transition to appropriate non-CFC alternatives. It also allows sufficient time for manufacturers to increase production of albuterol HFA MDIs and ipratropium bromide HFA MDIs to ensure adequate supplies for patients. Finally, we believe a December 31, 2013, effective date gives sufficient time for the development of a non-CFC formulation of a combination product containing albuterol and ipratropium or a non-CFC formulation of pirbuterol and processing of an application for new drug approval. In our responses to the comments below, we further explain the basis for our decision to extend the effective date from that proposed for Combivent Inhalation Aerosol and Maxair Autohalers.

(Comment 31) We received many comments requesting that the effective date be delayed until a CFC-free Combivent Inhalation Aerosol is available and to ensure patients will continue to have access to Maxair Autohaler during the reformulation and regulatory review phases. BI requests that FDA refrain from removing the essential-use designation for Combivent Inhalation Aerosol and initiate a future rulemaking addressing Combivent Inhalation Aerosol once a non-CFC Combivent product has been developed and approved by the agency for marketing. Another comment suggests that FDA condition the effective date (and therefore the length of the transition period) on the submission of an NDA and reconsider the appropriateness and length of the date once the NDA has been submitted for review. Graceway recommends that the agency revisit the essential-use status of pirbuterol after December 2012 to ensure essential products are available and requests an effective date of December 31, 2015.

(Response) As stated above, we carefully evaluated the comments submitted in response to the proposed rule and have determined that an effective date of December 31, 2013, is appropriate for the removal of the essential-use designation for Combivent

Inhalation Aerosol and Maxair Autohaler. We acknowledge that the presence of a non-CFC replacement for Combivent Inhalation Aerosol and Maxair Autohaler may be convenient for users. However, we note that a December 31, 2013, effective date allows a reasonable time to permit the development of a non-CFC replacement. Currently, we believe there are adequate non-CFC alternatives for Combivent Inhalation Aerosol available in the form of separate albuterol HFA MDIs and ipratropium bromide HFA MDIs. With respect to Maxair Autohaler, we believe adequate non-CFC alternatives exist in the form of Albuterol in HFA MDIs or in a nebulizer.

The effective date we are establishing for the removal of the essential-use designations for Combivent Inhalation Aerosol and Maxair Autohaler provides over 3 additional years for manufacturers to scale up production of albuterol HFA MDIs and ipratropium bromide HFA MDIs and will help ensure that there will be adequate supplies of the MDIs for patients. The effective date also provides over 3 years for patients and their health care providers to consider the different formulations of albuterol HFA MDI and levalbuterol HFA MDI and select the most appropriate therapeutic alternative. We are also permitting additional time for patients to transition from using a combination product to using two separate MDIs, to choose and adapt to a traditional press-and-breathe MDI, or to switch to using a nebulized solution.

We believe that educating patients and health care providers about the transition to other asthma treatments is very important to an orderly and safe transition of patients currently using Combivent Inhalation Aerosol and Maxair Autohaler, particularly for elderly patients, those with co-morbid conditions who are taking multiple medications, or those patients with coordination problems. The need to ensure that we have permitted sufficient time for patient education for transitioning from a Combivent Inhalation Aerosol or a Maxair Autohaler to an appropriate non-CFC substitute was an important factor in our decision to extend the proposed effective date in this final rule, to December 31, 2013. We will actively monitor the transition to CFC-free alternatives. Anyone who wishes to discuss a cooperative educational effort with DHHS and FDA should contact FDA or the Office of the Secretary of DHHS.

With respect to a conditional effective date for Combivent Inhalation Aerosol,

we believe it is important to specify a date certain when Combivent Inhalation Aerosol can no longer be marketed so patients and their health care providers may transition to therapeutic alternatives in a timely and orderly manner. We also note that the December 31, 2013, effective date allows a reasonable time to permit the development and approval of a non-CFC replacement for Combivent Inhalation Aerosol.

We decline to exclude Combivent Inhalation Aerosol from the rulemaking, as requested by BI. As discussed elsewhere in this document, the United States is committed to phasing out the remaining essential-use designations in the context of the Montreal Protocol. We believe finalizing this rule now and setting an effective date for Combivent Inhalation Aerosol that provides over a 3-year transition affects the eventual transition in a manner that is consistent with our duty to protect the public health.

#### *F. Conclusions*

We conclude there are no substantial technical barriers to formulating flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil as products that do not release ODSs. The evidence presented to the agency during this rulemaking does not meet the high threshold required by the first criterion on substantial technical barriers. We therefore conclude that oral pressurized MDIs containing flunisolide, triamcinolone, metaproterenol, pirbuterol, albuterol and ipratropium in combination, cromolyn, and nedocromil are no longer essential uses of ODSs and will be removed from the list of essential uses in § 2.125(e) as of the effective dates specified in this rule.

#### **V. Environmental Impact**

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Division of Dockets Management (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday. Under FDA's regulations implementing the National Environmental Policy Act (21 CFR part 25), an action of this type would require an environmental assessment under 21 CFR 25.31(a).

## VI. Analysis of Impacts

### A. Introduction

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is an economically significant regulatory action under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because only one CFC MDI manufacturer may possibly be considered a small entity, and one single small entity among an industry of hundreds does not constitute a “substantial number” under the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$133 million, using the most current (2008) Implicit Price Deflator for the Gross

Domestic Product. This final rule may result in a 1-year expenditure that would meet or exceed this amount.

The Congressional Review Act requires that regulations that have been identified as being major must be submitted to Congress before taking effect. This rule is major under the Congressional Review Act.

Limitations in the available data prevent us from estimating quantitatively the anticipated costs and benefits to society, so we focus instead on proxy measures. The costs of this final rule include the benefits lost by consumers who would have bought MDIs at current prices, but would not buy them at higher prices. Consumers of flunisolide MDIs (Aerobid Inhaler System) and MDIs delivering albuterol and ipratropium in combination (Combivent Inhalation Aerosol) will face higher prices because available substitutes cost more. In contrast, users of triamcinolone MDIs (Azmacort Inhalation Aerosol), metaproterenol MDIs (Alupent Inhalation Aerosol), pirbuterol MDIs (Maxair Autohaler), cromolyn sodium MDIs (Intal Inhaler), and nedocromil sodium MDIs (Tilade Inhaler) will be able to switch to less expensive alternatives. Consumers of these products may benefit as they are made aware of less expensive, therapeutically adequate alternatives to the MDIs they currently use. In the transition, these consumers may also be inconvenienced by the need to become accustomed to using an alternative product.

Net spending by consumers and third-party payers, including Federal and State Governments, will increase as patients switch to more expensive therapeutic alternatives; the potential for spending reductions by users of Azmacort, Alupent, Maxair, Intal, and Tilade is not enough to offset expected increases in spending by users of Aerobid and Combivent. These

spending increases, however, overstate social costs because, to some extent, they represent resources transferred from drug buyers (consumers and third-party payers) to drug sellers (drug manufacturers, wholesalers, pharmacies). We estimate that the introduction of generic albuterol HFA MDIs to the market will eliminate price and spending increases resulting from this final rule. The benefits of this rule include the value of improvements in the environment and public health that may result from reduced emissions of ODSs (for example, the reduced future incidence of skin cancers and cataracts). The benefits also include improved expected returns on investments in environmentally-friendly technologies and greater international cooperation to comply with the Montreal Protocol.

Estimated spending increases (summarized in tables 1 and 2 of this document) cannot be attributed solely to this rule. These increases result from Combivent users switching to Atrovent Inhalation Aerosol and albuterol HFA MDIs. The increased spending from this switch, in turn, is driven by the switch from inexpensive generic albuterol CFC MDIs to more expensive albuterol HFA MDIs, which was mandated in an earlier rulemaking (70 FR 17168, April 4, 2005). The spending increases described here may therefore be viewed as costs of the larger transition away from CFC products, rather than costs resulting from this rule in particular. We cannot conclusively attribute these estimated spending increases to either the prior rule or this final rule. While table 1 provides the annual quantifiable effects after all moieties have been removed from the market, table 2 provides the total impacts, factoring in the staggered phase-out and using two different possibilities for the date of HFA patent expiration.

TABLE 1.—SUMMARY OF ANNUAL QUANTIFIABLE EFFECTS OF THE FINAL RULE AFTER ALL SEVEN MOIETIES ARE REMOVED FROM THE MARKET

Patient Days of Therapy Affected	Increased MDI Expenditures, in 2009 dollars	Possible Reduction in Days of Therapy Used (millions)	Reduced CFC Emissions From Phase-Out (tonnes)
300 million	\$90–\$280 million	0.20–4.2	310–365

TABLE 2.—SUMMARY OF IMPACTS FROM PHASE-OUT TO DATE OF HFA PATENT EXPIRATION

Date of HFA Patent Expiration	Possible Change in Use of Asthma and COPD Therapy (million days of therapy)	Discount Rate	Increases in Expenditures on CFC-based MDIs, Present Value in 2010 (billions)
2012	NA	3%	-\$0.09 – -\$0.04
		7%	-\$0.09 – -\$0.04

TABLE 2.—SUMMARY OF IMPACTS FROM PHASE-OUT TO DATE OF HFA PATENT EXPIRATION—Continued

Date of HFA Patent Expiration	Possible Change in Use of Asthma and COPD Therapy (million days of therapy)	Discount Rate	Increases in Expenditures on CFC-based MDIs, Present Value in 2010 (billions)
2017	0.33–14	3%	\$0.16–\$0.91
		7%	\$0.12–\$0.73

The decreased use of MDIs may adversely affect some patients, but we currently lack data that would allow us to characterize such effects quantitatively. We also are unable to estimate quantitatively the reductions in skin cancers, cataracts, and environmental harm that may result from the reduction in CFC emissions by 310 to 365 tonnes during these years. Although we cannot estimate quantitatively the public health effects of the phase-out, based on a qualitative assessment, the agency concludes that the benefits of this regulation justify its costs.

We state the need for the regulation and its objective in section VI.B of this document. Section VI.C of the analysis provides background on CFC depletion of stratospheric ozone, the Montreal Protocol, the MDI market, and the health conditions that the seven moieties treat. We analyze the benefits and costs of the rule, including effects on government outlays, in section VI.D of this analysis. We assess alternative dates in section VI.E of this analysis, and discuss our sensitivity analysis in section VI.F. We discuss our conclusions in section VI.G of this analysis. We present an analysis of the effects on small business in a regulatory flexibility analysis in section VII of this document.

#### *B. Need for Regulation and the Objective of this Rule*

The objective of this final rule is to respond to the treaty requiring the United States to reduce atmospheric emissions of ODSs, specifically CFCs. CFCs and other ODSs deplete the stratospheric ozone that protects the Earth from ultraviolet solar radiation. We are ending the essential-use designation for ODSs used in MDIs containing triamcinolone, metaproterenol, pirbuterol, cromolyn sodium, nedocromil sodium, flunisolide, and albuterol and ipratropium in combination, because we have concluded that adequate therapeutic alternatives are available. Removing this essential-use designation will comply with obligations under the Montreal Protocol and the Clean Air

Act, thereby reducing emissions that deplete stratospheric ozone.

#### *C. Background*

##### 1. CFCs and Stratospheric Ozone

During the 1970s, scientists became aware of a relationship between the level of stratospheric ozone and industrial use of CFCs. Ozone (O<sub>3</sub>), which causes respiratory problems when it occurs in elevated concentrations near the ground, shields the Earth from potentially harmful solar radiation when it is in the stratosphere. Excessive exposure to solar radiation is associated with adverse health effects such as skin cancer and cataracts, as well as adverse environmental effects. Emissions of CFCs and other ODSs reduce stratospheric ozone concentrations through a catalytic reaction, thereby allowing more solar radiation to reach the Earth's surface. Because of this effect and its consequences, environmental scientists from the United States and other countries advocate ending all uses of these chemicals.

##### 2. The Montreal Protocol

The international effort to craft a coordinated response to the global environmental problem of stratospheric ozone depletion culminated in the Montreal Protocol, an international agreement to regulate and reduce production of ODSs. The Montreal Protocol is described in section II.B.2 of this document. One hundred and ninety-six countries are now Parties to the Montreal Protocol, and the overall usage of CFCs has been dramatically reduced. In 1986, global consumption of CFCs totaled about 1.1 million tonnes annually, and by 2004, total annual production had been reduced to 70,000 tonnes (Ref. 6). This decline amounts to more than a 90-percent decrease in production and is a key measure of the success of the Montreal Protocol. Within the United States, use of ODSs, and CFCs in particular, has fallen sharply; production and importation of CFCs is less than 1 percent of 1989 production and importation (Ref. 6).

A relevant aspect of the Montreal Protocol is that production of CFCs in any year by any country is banned after

the phase-out date unless the Parties to the Montreal Protocol agree to designate the use for which the CFCs are produced as “essential” and approve a quantity of new production for that use.

Each year, each Party nominates the amount of CFCs needed for each essential use and provides the reason why such use is essential. Agreement on both the essentiality and the amount of CFCs needed for each nominated use is reached by consensus at the annual Meeting of the Parties.

##### 3. Benefits of the Montreal Protocol

EPA has generated a series of estimates of the environmental and public health benefits of the Montreal Protocol (Ref. 7). The benefits include reductions of hundreds of millions of nonfatal skin cancers, 6 million fewer fatalities due to skin cancer, and 27.5 million cataracts avoided between 1990 and 2165 if the Montreal Protocol were fully implemented. EPA estimated the value of these and related benefits to equal \$4.3 trillion in present value when discounted at 2 percent over the period of 175 years. This amount is equivalent to about \$7 trillion in 2008 prices after adjusting for inflation between 1990 and 2008. This estimate includes all benefits of total global ODS emission reductions expected from the Montreal Protocol and is based on reductions from a baseline scenario in which ODS emissions would continue to grow for decades but for the Montreal Protocol.

##### 4. Characteristics of COPD

The seven CFC MDI products that are the subject of this final rule, and Combivent in particular, may be used to treat COPD. While there is some overlap between asthma patients and COPD patients, COPD encompasses a group of diseases characterized by relatively fixed airway obstruction associated with breathing-related symptoms (for example, chronic coughing, expectoration, and wheezing). COPD is generally associated with cigarette smoking and is extremely rare in persons younger than 25.

According to the National Health Interview Survey (NHIS), an estimated 10 million adults in the United States

carried the diagnosis of COPD in 2007 (Ref. 8). The proportion of the U.S. population with mild or moderate COPD has declined over the last quarter century, although the rate of COPD in females increased relative to males between 1980 and 2000. The most effective intervention in modifying the course of COPD is smoking cessation. Symptoms such as coughing, wheezing, and sputum production are treated with medication.

#### 5. Characteristics of Asthma

These seven CFC MDIs, with the exception of Combivent, may be used to treat asthma, a chronic respiratory disease characterized by episodes or attacks of bronchospasm in addition to chronic airway inflammation. These attacks can vary from mild to life-threatening and involve shortness of breath, wheezing, coughing, or a combination of symptoms. Many factors, including allergens, exercise, viral infections, and others, may trigger an asthma attack.

According to the 2007 NHIS, approximately 23 million adult patients in the United States reported they had asthma (Ref. 9). The prevalence of asthma decreases then increases with age, with the prevalence being 100 per 1,000 children ages 5–17 (5.3 million children) compared to 72 per 1,000 among adults ages 18–44 (8.0 million), 72 per 1,000 among adults ages 45–64 (5.5 million), and 75 per 1,000 among adults age 65 and over (2.7 million) (Ref. 9).

The NHIS reported that during 2007, about 12 million patients reported experiencing an asthma attack in the course of the previous year (Ref. 9, table 10). According to the National Ambulatory Medical Care Survey, in 2006 there were 1.2 million outpatient asthma visits to physician offices and hospital clinics and 1.7 million emergency room visits (Ref. 9, table 19). According to the National Center for Health Statistics, there were 444,000 hospital admissions for asthma in 2006 (Ref. 9, table 16) and 3,563 deaths (Ref. 9, table 1). The estimated direct medical cost of asthma (hospital services, physician care, and medications) was \$14.7 billion (Ref. 9, table 20).

While the prevalence of asthma has been increasing in recent years, the CDC reports that the incidence of asthma (or the rate of new diagnoses) has remained fairly constant since 1997 (Ref. 10). Non-Hispanic Blacks, children under 17 years old, and females have higher incidence rates than the general population and also have higher attack prevalence. The CDC notes that although increases have occurred in the numbers and rates of physician office visits, hospital outpatient visits, and emergency room visits, these increases are accounted for by the increase in prevalence. This phenomenon might indicate early successes by asthma intervention programs that include access to medications.

#### 6. Current U.S. Market for CFC MDIs

For the 12-month period ending June 2009, we estimate that sales of these

seven CFC MDIs provided roughly 300 million days of therapy, sufficient to treat roughly 800,000 COPD and asthma patients for a full year. We use days of therapy as a common metric because these MDIs vary in the number of inhalations provided, and the number of inhalations that the average user would use each day. We calculate the number of days of therapy provided by each MDI as equal to the number of MDIs sold, multiplied by the number of inhalations contained by the MDI, divided by the recommended, or usual, daily inhalations described in the MDI's physician labeling:  $[(\text{Days of Therapy}) = (\text{MDIs}) \times (\text{Inhalations/MDI}) \div (\text{Inhalations/day})]$ . We calculate MDI sales for each of the seven products using data from IMS Health's National Sales Perspective (Ref. 11).

We calculate the average price per day of therapy for a CFC MDI as the total revenue derived from sales of that product in the 12 months ending June 2009, as reported by IMS Health's National Sales Perspective, divided by the number of days of therapy for that product:  $[(\text{Price/Day of Therapy}) = (\text{Total Sales}) \div (\text{Total Days of Therapy})]$ . We use the same method to calculate the average price per day of therapy for the nine non-ozone depleting products we consider the most medically appropriate alternatives to these seven CFC MDIs. We then estimate the price premium (or savings) associated with alternatives as the difference between price per day of the CFC product and price per day of its most appropriate alternatives.

TABLE 3.—SUMMARY OF CFC MDIS, NON-ODS ALTERNATIVES, AND EXPECTED PRICE CHANGES PER DAY OF THERAPY (REF. 11)

CFC MDI	Non-ODS Alternatives	Price Premium per Day of Therapy	
		Maximum	Minimum
Aerobid Aerobid-M	QVAR PULMICORT TURBUHALER FLOVENT HFA ASMANEX TWISTHALER	\$1.06	\$0.34
Azmacort	QVAR PULMICORT TURBUHALER FLOVENT HFA ASMANEX TWISTHALER	-\$1.10	-\$1.82
Alupent	PROAIR HFA PROVENTIL HFA VENTOLIN HFA XOPENEX HFA	\$0.34	-\$0.31
Maxair	PROAIR HFA PROVENTIL HFA VENTOLIN HFA XOPENEX HFA	-\$0.21	-\$0.86

TABLE 3.—SUMMARY OF CFC MDIs, NON-ODS ALTERNATIVES, AND EXPECTED PRICE CHANGES PER DAY OF THERAPY (REF. 11)—Continued

CFC MDI	Non-ODS Alternatives	Price Premium per Day of Therapy	
		Maximum	Minimum
Intal	QVAR PULMICORT TURBUHALER FLOVENT HFA ASMANEX TWISTHALER	-\$1.34	-\$2.06
Tilade	QVAR PULMICORT TURBUHALER FLOVENT HFA ASMANEX TWISTHALER	N/A	N/A
Combivent	ATROVENT HFA + one of the following: PROAIR HFA PROVENTIL HFA VENTOLIN HFA XOPENEX HFA	\$1.30	\$0.65

Source: IMS Health, IMS National Sales Perspective (TM), 2009, extracted September 2009.

Table 3 of this document shows each of the CFC MDIs that would no longer be marketed, the therapeutic alternatives that users of these CFC MDIs would be expected to purchase, and the range of differences in price per day of therapy. For example, an Azmacort user would be expected to switch to QVAR, PULMICORT TURBUHALER, FLOVENT HFA, or ASMANEX TWISTHALER. The most expensive of these alternatives would cost roughly \$1.10 cents less per day of therapy, and the least expensive would cost roughly \$1.80 less per day of therapy. Combivent users would be expected to switch to both ATROVENT HFA and one of four albuterol HFA MDIs currently marketed. We make no attempt to forecast future price changes, but note that recent changes in prices of CFC MDIs did not differ systematically from the changes in prices of the proposed alternatives. For our Maxair calculations, we have added the annual purchase of a \$30 spacer to the cost of switching to an alternative therapy.

If all users switched to the least expensive alternative therapy, the average price for users of these seven CFC MDIs, weighted by the number of days of therapy sold for each product in 2009, would increase 9 percent; if all users switched to the most expensive alternative therapy, the average price per day of therapy would increase 28 percent. These price differences represent differences in average ex-manufacturer prices across all distribution channels and do not incorporate differences introduced by retail markups or off-invoice discounts (Ref. 11).

It is not possible to attribute these estimated price increases exclusively to

this final rule. These estimated price increases are driven almost entirely by the large population of Combivent users switching to both Atrovent Inhalation Aerosol and albuterol HFA MDIs, which, together, are more expensive. Through 2003, the price for a day of therapy with Combivent was roughly equal to the sum of a day of therapy with Atrovent (the ipratropium CFC MDI which has been withdrawn from the market) and a day of therapy with a generic albuterol CFC MDI. After 2003, the price of a day of Combivent therapy rose to be roughly equal to the sum of a day of therapy with Atrovent HFA and a day of therapy with a generic albuterol CFC MDI, likely in anticipation of the withdrawal of Atrovent from the market. The range of spending changes for Combivent therapy alone is \$150 million to \$300 million; excluding the effects of Combivent therapy, the range of spending changes is -\$25 million to -\$65 million.

We estimate that these seven CFC MDIs are responsible for roughly 310 to 365 tonnes of CFC emissions annually. The CFC content of the seven CFC MDIs ranges from about 6 to 20.5 grams per MDI. Multiplying the total 2005 sales of each of the CFC MDIs by its CFC content, and allowing for an additional 10 percent loss in the production process, yields a total of 310 tonnes of CFC emissions annually, our low estimate. Our recent data shows a decline in the use of the seven moieties to be phased out, so our low estimate may overstate the reduction in CFCs attributable to this final rule. The CFC MDI manufacturers requested roughly 365 tonnes of CFCs for production of the seven CFC MDIs for 2007, which we use for our high estimate.

#### D. Benefits and Costs of the Final Rule

We estimate the benefits and costs of a government action relative to a baseline scenario that in this case is a description of the production, use, and access to these seven CFC MDIs in the absence of this rule. In this section, we first describe such a baseline and then present our analysis of the benefits of the final rule. We also present an analysis of the most plausible regulatory alternative, given the Montreal Protocol. Next we turn to the costs of the rule and to an analysis of the effects on the Medicare and Medicaid programs.

##### 1. Baseline Conditions

We developed baseline estimates of future conditions to assess the economic effects of prohibiting marketing of these seven CFC MDIs. MDIs containing metaproterenol and nedocromil will be removed from the market June 14, 2010. MDIs containing triamcinolone and cromolyn will be removed from the market December 31, 2010. MDIs containing flunisolide will be removed from the market June 30, 2011. Those containing albuterol and ipratropium in combination and pirbuterol will be removed from the market December 31, 2013.

It is standard practice to use, as a baseline, the state of the world without the rule in question, or where this implements a legislative requirement, the world without the statute. For this final rule, the Montreal Protocol makes the baseline assumption of indefinite availability infeasible, but we can nevertheless use it as a point of reference. In addition to the baseline of indefinite availability, we also assess alternative phase-out dates for the final disappearance of CFC products.

Throughout this baseline analysis, we assume that sufficient inventories of CFCs are available to meet demand for these seven CFC MDIs through the date they lose their essential-use designation and that there will be sufficient therapeutic alternatives to meet demand after they are removed from the market.

However, in the absence of this final rule, the parties to the Montreal Protocol would still have the ability to restrict access to CFCs required for the manufacture of products using these seven moieties. This final rule, in establishing a timetable for phasing out these seven moieties, demonstrates a commitment to phasing out CFCs, which reduces the need for the parties to act on their own. In a sense, this final rule does not phase out these moieties, but attempts to establish a phase-out timetable preferable to the one that the parties to the Montreal Protocol might impose. The existence of a timetable imposed by the parties to the Montreal Protocol different from this final rule implies the costs detailed in the next section of this analysis will accrue, although perhaps at a different time, regardless of whether this final rule is enacted. The cost-benefit analysis presented here would then apply to the withdrawal of the CFC-containing products from the market rather than to the specific effects of the final rule.

## 2. Benefits of the Final Rule

The benefits of the final rule include environmental and public health improvements from protecting stratospheric ozone by reducing CFC emissions. Benefits also include expectations of increased returns on investments in environmentally friendly technology, and continued international cooperation to comply with the spirit of the Montreal Protocol, thereby potentially reducing future emissions of ODSs throughout the world.

Failure to enact this final rule would leave the timetable for phasing out these seven moieties in the hands of the parties to the Montreal Protocol. As the parties to the Montreal Protocol would see these drugs with therapeutic alternatives and no regulation in place to commit to their phase-out, their likely response would be to deny the provision of CFCs for their continued production and to do so in a way that did not provide for an adequate transition period.

a. *Reduced CFC emissions.* Market withdrawal of these seven CFC MDIs will reduce emissions by approximately 310 to 365 tonnes of CFCs per year. Current CFC inventories are substantial. Nominations for new CFC production are generally approved by the Parties to

the Montreal Protocol 2 years in advance. The final rule would ban marketing of two of the seven CFC MDIs after June 14, 2010, two more after December 31, 2010, one after June 30, 2011, and the remaining two after December 31, 2013.

There is some uncertainty with respect to the amount of inventory that will be available in the future, but we anticipate that existing inventory will allow EPA, in consultation with FDA, to avoid nominating additional CFC production for 2010 through 2013. Therefore, we estimate the regulation will reduce CFC use by 310 to 365 tonnes per year after the end of 2013, a benefit that will continue indefinitely.

In an evaluation of its program to administer the Clean Air Act, EPA has estimated that the benefits of controlling ODSs under the Montreal Protocol are the equivalent of \$7 trillion in 2008 dollars. However, EPA's report provides no information on the total quantities of reduced emissions or the incremental value per tonne of reduced emissions. EPA derived its benefits estimates from a baseline that included continued increases in emissions in the absence of the Montreal Protocol. We have searched for authoritative scientific research that quantifies the marginal economic benefit of incremental emission reductions under the Montreal Protocol, but have found none conducted during the last 10 years. As a result, we are unable to quantify the environmental and human health benefits of reduced emissions from this regulation. Such benefits, in any event, were apparently included in EPA's earlier estimate of benefits of the Clean Air Act.

As a share of total global emissions, the reduction associated with the elimination of the seven CFC MDIs represents only a fraction of 1 percent. Current allocations of CFCs for the seven MDIs account for less than 0.1 percent of the total 1986 global production of CFCs (Ref. 6). Furthermore, current U.S. CFC emissions from MDIs represent a much smaller, but unknown share of the total emissions reduction associated with EPA's estimate of \$7 trillion in benefits because that estimate reflects future emissions growth that has not occurred.

Although the direct benefits of this regulation are small relative to the overall benefits of the Montreal Protocol, the reduced exposure to UV-B radiation that will result from these reduced emissions will help protect public health. The final rule will account for some small part of the benefits estimated by EPA. However, we are unable to assess or quantify specific

reductions in future skin cancers and cataracts associated with these reduced emissions.

b. *Returns on investment in environmentally-friendly technology.* Establishing a phase-out date prior to the expiration of patents on HFA MDI technology not only rewards the developers of the HFA technology, but also encourages other potential developers of ozone-safe technologies. Furthermore, a phase-out date would preserve expectations that the government protects incentives to research and develop ozone-safe and other new technologies.

Newly developed technologies to avoid ODS emissions have resulted in more environmentally "friendly" air conditioners, refrigerants, solvents, and propellants, but only after significant investments. Several manufacturers have claimed development costs that total between \$250 million and \$400 million to develop HFA MDIs and new propellant-free devices for the global market (Ref. 12).

These investments have resulted in several innovative products in addition to HFA MDIs. For example, breath-activated delivery systems, dose counters, dry-powder inhalers, and mini-nebulizers have also been successfully marketed.

c. *International cooperation.* The advantages of selecting a date that maintains international cooperation are substantial because the Montreal Protocol, like most international environmental treaties, relies primarily on a system of national self-enforcement, although it also includes a mechanism to address noncompliance. In addition, compliance with its directives is subject to differences in national implementation procedures. Economically less-developed nations, which have slower phase-out schedules than developed nations, have emphasized that progress in eliminating ODSs in developing nations is affected by observed progress by developed nations, such as the United States. If we had adopted a later phase-out date, other Parties could attempt to delay their own control measures.

## 3. Costs of the Final Rule

The final rule would increase spending for needed medicines used to treat asthma and COPD. The social costs of the final rule include the health benefits lost through decreased use of medicines that may result from increased prices. We discuss the increased spending and then the social costs in turn. We are unable to quantify the economic costs of reducing the variety of marketed products from

which consumers, and their doctors, can choose. Because we lack data that would enable us to measure the effects of a decreased number of products from which to choose, in this analysis we only quantify the effects on spending.

In the absence of this regulation, we would expect 300 million days of therapy with these seven CFC MDIs to be sold annually. With this regulation, patients who would have used any of these seven CFC MDIs are expected to switch to one of several other products as described in table 3 of this document. Depending on whether asthma and COPD patients use the most or least expensive of alternatives, private, third-party, and public expenditures on inhaled medicines would increase by roughly \$90 million to \$280 million per year. These expenditure increases will be driven almost exclusively by Combivent users changing to both Atrovent and one of four available albuterol HFA products. With most, perhaps all, of this increase coming from estimated increased spending on albuterol HFA products, what happens to the prices of albuterol products will largely determine the change in overall spending. To the extent that expenditures rise, these higher costs would continue until lower-priced non-ODS substitutes appear on the market. For many of these products it is difficult to predict when this might occur. With the exception of albuterol CFC MDIs, generic versions of prescription MDIs and DPIs for treatment of asthma and COPD have not been introduced, despite the expiration of the patents on many of the innovator products. However, the market for albuterol MDIs has a clear history of generic competition. A previous rulemaking (70 FR 17168, April 4, 2005) removed albuterol CFC MDIs, including generic albuterol CFC MDIs, from the market on December 31, 2008. If these cheaper generic albuterol MDIs had been able to remain on the market, the expected cost of switching from Combivent to both Atrovent and an albuterol HFA MDI would be essentially eliminated. Because expenditure increases resulting from this final rule stem almost exclusively from the transition away from Combivent, such increases would most likely be eliminated with the introduction of generic albuterol HFA MDIs to the market. There are multiple patents listed in "Approved Drug Products with Therapeutic Equivalence Evaluations" (Orange Book) for albuterol HFA MDIs, expiring from late 2009 to beyond 2020, creating a wide range of possible dates for generic entry. In the proposed rule, we assumed potential entry in 2010 and

2017. As moieties will not start to be removed from the market until June 14, 2010, generic entry in 2010 would eliminate almost all of the estimated costs of the transition. For this final rule, we use 2012 and 2017 for assumed entry of generic substitutes for current branded albuterol MDI products. One recent study predicted the introduction of a generic albuterol HFA MDI in 2012 (Ref. 13). For the year 2010, we include only the impact of Alupent and Tilade and for the years 2011 through 2013, we include in the analysis the impact of all moieties except Combivent and Maxair. Removing those five moieties from the market results in a change in annual private, third-party, and public expenditures of roughly -\$20 million to -\$50 million. Of course, unforeseen introduction of alternative therapies could reduce any expected increases in expenditures.

These increased expenditures represent, to some extent, transfers from consumers and third-party payers, including State and Federal Governments, to pharmaceutical manufacturers, patent holders, and other residual claimants. However, to some extent, increased expenditures represent purchases of products that are more costly to manufacture and bring to market. We are unable to estimate the fraction of the increased expenditures that constitute societal costs.

We estimate that the average price increases resulting from market withdrawal of less expensive CFC MDIs could reduce use of inhaled therapy by a range of 0.20 to 4.2 million days annually, equivalent to roughly 0.5 to 12 thousand patient years of therapy. The impact of this reduction on health outcomes is too uncertain to quantify given available data. Some patients, however, respond to price increases for medications for chronic conditions in ways that may adversely affect their health.

A recent article found that, "copayment increases led to increased use of emergency department visits and hospital days for the sentinel conditions of diabetes, asthma, and gastric acid disorder: predicted annual emergency department visits increased by 17 percent and hospital days by 10 percent when copayments doubled" (Ref. 14). However, the article proceeds to characterize these results as "not definitive." This finding suggests that increased prices for medicines may lead to some adverse public health effects among the users of these seven CFC MDIs.

Another article found that, "a single inhaler containing both ipratropium and albuterol can increase compliance and

decrease respiratory morbidity and charges over and above the effects achieved with separate inhalers for these 2 agents" (Ref. 5). The article found that access to single inhaler therapy was associated with a 17 percent reduction in monthly costs. This finding suggests that some current users of Combivent may suffer adverse health consequences because of compliance issues associated with using multiple inhalers. This preliminary evidence is insufficient to permit us to quantify adverse public health effects. We use expected reductions in days of therapy purchased as a surrogate measure of the impact.

Our approach to estimating the effects of this final rule assumes that the primary effect of an elimination of these seven CFC MDIs from the market would be an increase in the average price of MDI and DPI therapy. Given the price increase expected, we have projected how the overall quantity of MDI and DPI therapy consumed may decline as a result of the increase in price. We assume that the reduction in the use of MDI and DPI therapy attributable to this rule can be calculated as the product of the sensitivity of use with respect to the price increase, the baseline use of these seven CFC MDIs among price-sensitive patients, and the price increase in percentage terms. We discuss these in turn.

We have no information about how consumers react to increases in the price of these seven forms of CFC MDIs in particular, much less to what amounts to a compulsory switch to different, more expensive drugs. Economists have, however, estimated the response of consumers to higher insurance copayments for drugs in general. Goldman et al. estimate price elasticities in the range of -0.33 (for all anti-asthmatic drugs) to -0.22 (for anti-asthmatic drugs among patients with chronic asthma), implying that a 10 percent increase in insurance copayments apparently leads to a reduction in use of between 2.2 and 3.3 percent (Ref. 14), but the authors report that there is wide variance based on the availability of over-the-counter substitutes. For example, for drugs with no over-the-counter substitutes—a set that includes all seven of these CFC MDIs—the reported price elasticity was -0.15 (Ref. 14, p. 2348). Drugs included as anti-asthmatics in this study include anti-cholinergics, anti-inflammatory asthma agents, leukotriene modulators, oral steroids, steroid inhalers, sympathomimetics, and xanthines. We have used price elasticities of between -0.15 and -0.33 to estimate the potential effect of price increases on demand.



To derive an estimate of the quantity of medicines not sold as a result of this rule, we need an estimate of the baseline use of these seven CFC MDIs by price-sensitive consumers. To do so, we distinguish between the insured and the uninsured. Based on IMS data, we estimate that asthma and COPD patients receive roughly 300 million days of therapy each year in the form of these seven CFC MDIs (Ref. 11). If users of these products are uninsured in proportion to the share of uninsured in the overall U.S. population (15.4 percent) (Ref. 15), then uninsured asthma and COPD patients receive roughly 46 million days of therapy  $[(300 \text{ million}) \times (15.4 \text{ percent})]$  in the form of these seven CFC MDIs, equivalent to roughly 126 thousand patient years.

Increases in the price of therapy, however, will mostly affect Combivent users with COPD. For Combivent users, we use the two major sources of decreased use, price increases for the uninsured and increased copayments for the insured, to calculate a very rough estimate of reduced patient days. According to the 2007 NHIS, 1.8 million individuals over the age of 65 have bronchitis and 1.7 million have emphysema. Data from the 2007 NHIS also suggest that approximately 31 percent of adults with emphysema also have chronic bronchitis (Ref. 8, Figure 2). Assuming this ratio holds for those over 65, there are about 3.1 million individuals over the age of 65 with COPD (3.6 million with either diagnosis—500,000 with both). This number of patients represents approximately 30 percent of the 10 million adults with COPD. Assuming all of those over 65 with COPD and about 85 percent of those under 65 have some form of drug insurance means that about 9.1 million of those with COPD are covered by drug insurance and 1.1 million are not. The uninsured estimate represents 10 percent of the population with COPD, so there would be approximately 23.7 million days of uninsured therapy for Combivent annually.

The midpoint of the high and low price increase estimates for Combivent is 27 percent. Assuming uninsured consumers face a 27 percent price increase and have an elasticity of 0.15, there would be among the uninsured an annual reduction in therapy of approximately 960,000 days after Combivent is removed from the market.

We do not know the characteristics of the prescription drug insurance held by those with COPD, but recognize that many of the 9.1 million insured face per-product copayments. These copayments will likely be a smaller

fraction of income for the insured than are the price increases for the uninsured, so we assume the demand to be less elastic. Assuming 214 million annual days of insured therapy and an elasticity of 0.075, a 100 percent increase in the size of copayments would imply a 7.5 percent reduction in quantity demanded, or 16.0 million annual days of therapy foregone. Thus, a very rough estimate of a change in quantity of Combivent demanded in response to a price increase would be 17 million days of therapy  $(960,000 + 16.0 \text{ million})$ . The appearance of a reformulated non CFC product combining albuterol and ipratropium would avert the 16 million lost days of therapy potentially associated with the co-payment effect.

Finally, for an overall average estimate of the effects of the average price increases, we estimate that users of these seven CFC MDIs face an average price increase of between 9 and 28 percent per day of therapy after all seven moieties have been removed from the market, depending on whether asthma and COPD patients switch to the most or least expensive of the proposed alternatives detailed in table 3 of this document. We calculate the low and high estimates as the average percentage price change of the least and most expensive alternatives to each of the seven CFC MDIs, weighted by the number of days of therapy of CFC MDIs sold for the twelve months ending June 2009. Excluding Combivent, users of the other six CFC MDIs would face prices somewhere between 15 and 41 percent lower. Excluding Combivent and Maxair, the users of the other five CFC MDIs would face prices between 17 and 39 percent lower.

We combine different measures of price elasticities (-0.15 to -0.33), the size of the uninsured CFC MDI market (15 to 46 million days of therapy), and estimated price increases (9 percent to 28 percent) to estimate the impact of average price increases on use. For example, assuming a price elasticity of -0.15 and 15 million days of therapy sold to the uninsured annually, a 9 percent price increase would reduce demand for inhaled therapy by the uninsured by roughly 200,000 days of therapy annually. By contrast, assuming a price elasticity of -0.33 and 46 million days of therapy sold to the uninsured annually, a 28 percent price increase would reduce uninsured demand by roughly 4 million days of therapy  $[(46 \text{ million days}) \times (-0.33 \text{ elasticity}) \times (28 \text{ percent price increase}) = 4 \text{ million days of therapy}]$ . We recognize that because of varying measures of the size of the CFC MDI market for the uninsured,

uncertainty about the magnitude of price increases, and consumer response, the true impact of the rule could fall outside this range.

We recognize that as a result of this rulemaking, patients will lose access to products they prefer to use. This regulatory action will constrain consumption decisions, forcing patients to switch to substitute products they would not otherwise choose to consume, resulting in consumer welfare loss. We lack information to reliably estimate the social cost associated with the loss of preferred products, but we recognize such a cost exists.

#### 4. Effects on Medicare and Medicaid

According to the 2006 Medical Expenditure Panel Survey (MEPS), Medicaid pays for 13.8 of the expenses attributable to COPD and asthma. Medicare pays for 30.6 percent of these expenses. Assuming these MEPS payment estimates for Medicaid and Medicare apply to the incremental expenses from switching to HFA MDIs, this final rule will increase annual Federal Medicaid spending between \$12 and \$39 million. We estimate that total spending by Medicare and Medicare beneficiaries will increase between \$27 million to \$87 million annually. The estimated annual impacts would apply after 2013, after all seven moieties have been phased out, and continue until the HFA technology loses patent protection. Where the impact would occur within these broad ranges would depend on the alternative therapies chosen.

For the year 2010, the change in Medicaid and Medicare spending would be associated with the costs of switching from Tilade and Alpuent. Medicaid spending would change somewhere between a decline of \$50,000 and an increase of \$60,000. The change in Medicare spending would be between a decline of \$110,000 and an increase of \$130,000. For the years 2011 through 2013, we include the impacts associated with all seven moieties except Maxair and Combivent. In those years, annual Medicaid spending would fall by an estimated \$2.9 to \$6.7 million. Medicare spending would decline between \$6.3 and \$15 million annually.

The present discounted value of the impact of the regulation on Medicaid expenses, assuming HFA patent expiration at the end of 2017 is from \$20 million to \$100 million at a 7 percent discount rate and from \$20 million to \$130 million at 3 percent. For Medicare, the present discounted value is from \$40 million to \$220 million at a 7 percent discount rate and from \$50 million to \$280 million at 3 percent. Assuming the HFA technology loses patent protection

at the end of 2012, the change in Medicaid expenditures is a present discounted -\$12 million to -\$5 million at 7 percent and -\$13 million to -\$5 million at 3 percent. For Medicare, the change in expenditures is -\$30 million to -\$10 million at a 7 percent discount rate and -\$30 million to -\$10 million at a 3 percent rate.

We are unable to estimate the extent to which Medicare cost increases will be paid by Medicare beneficiaries themselves or by the Federal Government. Whether individuals or the Federal Government will pay depends

on beneficiaries' aggregate drug spending in a given year and the Medicare Part D plan they choose. Moreover, as we expect the characteristics of Medicare Part D and the types of plans chosen by beneficiaries to continue to evolve in coming years, past payment statistics may not reflect future conditions. These are rough estimates.

#### *E. Alternative Phase-Out Dates*

We consider the impacts of the alternative phase-out date of December 31, 2010, for the five moieties not already phased out at the end of 2010.

The expense information in table 4 shows such an earlier phase-out would increase expenditures and further decrease the use of asthma and COPD therapy. Moreover, an earlier phase-out data would be impractical due to the time necessary to complete the regulatory process and to the risk of MDI shortages if the market has insufficient time to switch from CFC to HFA MDIs. A phase-out date set too far in the future, however, would be incompatible with the timetable set by the Montreal Protocol. This leaves a narrow window for consideration.

TABLE 4.—SUMMARY OF IMPACTS OF A DECEMBER 31, 2010 PHASE-OUT RELATIVE TO HFA PATENT EXPIRATION

Date of HFA Patent Expiration	Possible Decreases in Use of Asthma and COPD Therapy (million days of therapy)	Discount Rate	Increases in Expenditures on CFC-based MDIS, Present Value in 2009 (billions)
2012	0.40–8.5	3%	\$0.17–\$0.54
		7%	\$0.16–\$0.51
2017	1.4–30	3%	\$0.55–\$1.77
		7%	\$0.48–\$1.53

#### *F. Sensitivity Analyses*

The estimated impacts of this final rule summarized in table 5 of this document incorporate a range of estimates about the price increases consumers and other payers will face, the size of the affected market and how consumers will respond to price increases. This range represents the full uncertainty range for the estimated effects of this final rule. The full range incorporates the ranges of estimates for the individual uncertain variables in the analysis.

In each section of the document, we show the ranges associated with each major uncertain variable. To estimate reduced use of inhaled medications, we estimate 15 million to 46 million days of therapy are used by uninsured individuals annually. We estimate that these consumers will face price increases in switching from CFC to HFA MDIs from 9 to 28 percent per day of therapy, depending on whether they switch to the most expensive or least expensive of available alternatives. We

use price elasticities ranging from -0.15 to -0.33 to estimate how consumers will reduce their MDI use in response to price increases.

Similarly, estimates of the impact of the final rule on public and private spending depend on the overall size of the CFC MDI market and how much prices increase. We estimate the consumers purchase roughly 300 million days of therapy in the form of CFC MDIs annually, and that prices will increase 9 to 28 percent depending on whether they switch to the most expensive or least expensive of available alternatives. If we exclude Combivent from the calculation, the expected price effects range from a 15 to 41 percent decrease, depending on whether they switch to the most expensive or least expensive of available alternatives. If we also exclude Maxair, expected price effects range from a 17 to 39 percent decrease.

#### *G. Conclusion*

Limits in available data prevent us from quantifying the costs and benefits

of the final rule and weighing them in comparable terms. The benefits of international cooperation to reduce ozone emissions are potentially enormous but difficult to attribute to any of the small steps, such as this final rule, that make such cooperation effective. As discussed above in detail, the benefits of the final rule include environmental and public health improvements from protecting stratospheric ozone by reducing CFC emissions. Benefits also include expectations of increased returns on investments in environmentally friendly technology, reduced risk of unexpected disruption of supply of CFC MDIs, and continued international cooperation to comply with the spirit of the Montreal Protocol, thereby potentially reducing future emissions of ODSs throughout the world. This final rule could potentially cost public and private consumers of CFC MDIs hundreds of millions of dollars annually, but it is difficult to link these costs to adverse public health outcomes.

TABLE 5.—SUMMARY ACCOUNTING TABLE

Category	Primary Estimate	Low Estimate	High Estimate	Units			Notes
				Year Dollars	Discount Rate	Period Covered	

Benefits

TABLE 5.—SUMMARY ACCOUNTING TABLE—Continued

[illegible]

TABLE 5.—SUMMARY ACCOUNTING TABLE—Continued

Category	Primary Estimate	Low Estimate	High Estimate	Units			Notes
				Year Dollars	Discount Rate	Period Covered	
Federal Annualized Monetized \$millions/year		-\$5.2 million– -\$2.2 million	\$6.9 million– \$43 million	2010	7%	Annual	Medicare plus Medicaid, 10-year annualization. Low estimate assumes 2012 HFA patent expiration. High estimate assumes HFA patent expires end of 2017. Rough approximation.
		-\$4.7 million– -\$2.0 million	\$8.3 million– \$46 million	2010	3%	Annual	
From/To	From: U.S. Government			To: Drug manufacturers			
Effects							
Small Business							A single drug manufacturer may meet threshold for small business. Affected entities are otherwise not small.

## VII. Regulatory Flexibility Analysis

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. For purposes of determining whether a substantial number of small entities are affected by this rule, the industry includes all manufacturers of pharmaceutical products in the United States. According to the U.S. Department of Commerce, the industry of “pharmaceutical preparation manufacturers” includes 901 establishments controlled by 723 companies (Ref. 3). Of these establishments, 822 have fewer than 500 employees.

This rule significantly affects firms that manufacture the seven CFC MDIs. Because there is, at most, a single small CFC MDI manufacturer that would be significantly affected by the rule, in an industry with hundreds of small entities, the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Additional discussion of our analysis can be found in section IV, Comments on the 2007 Proposed Rule, which responds to Comment 16 submitted by Graceway.

## VIII. The Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by

the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## IX. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## X. References

The following references have been placed on display in the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Expert Panel Report 3: Guidelines for the Diagnosis and Management of Asthma (EPR-3), NIH Publication No. 07-4051, Bethesda, MD, U.S. Department of Health and Human Services; National Institutes of Health; National Heart, Lung, and Blood Institute; National Asthma Education and Prevention

Program, 2007, available at <http://www.nhlbi.nih.gov/guidelines/asthma/asthgdln.htm>.

2. Hess, Dean R., “Aerosol Delivery Devices in the Treatment of Asthma,” *Respiratory Care*, 53, 2008: 699–723.

3. United States, Department of Commerce, Census Bureau; Economics and Statistics Administration, *Pharmaceutical Preparation Manufacturing*: 2002, Washington, D.C., U.S. Census Bureau, 2004.

4. Envrios March, *Study on the Use of HFCs for Metered Dose Inhalers In the European Union*: Final report following submission to the ECCP (European Commission Climate Change Policy Group), Republic of Geneva: International Pharmaceutical Aerosol Consortium, December 2000.

5. Chrischilles, Elizabeth, Daniel Gilden, Joanna Kubisiak, Linda Rubenstein, and Hemal Shah, “Delivery of Ipratropium and Albuterol Combination Therapy for Chronic Obstructive Pulmonary Disease: Effectiveness of a Two-in-one Inhaler Versus Separate Inhalers,” *The American Journal of Managed Care*, 8 (2002): 902–11.

6. United Nations Environmental Programme, *Production and Consumption of Ozone-Depleting Substances: 1986–2004*, 2005.

7. U.S. Environmental Protection Agency, “The Benefits and Costs of the Clean Air Act: 1990–2010” (<http://www.epa.gov/air/sect812/1990-2010/fullrept.pdf>), November 1999.

8. American Lung Association, “Trends in COPD (Chronic Bronchitis and Emphysema): Morbidity and Mortality,” *Epidemiology & Statistics Unit, Research and Scientific Affairs*, February 2010.

9. American Lung Association, “Trends in Asthma Morbidity and Mortality,”

Epidemiology & Statistics Unit, Research and Scientific Affairs, January 2009.

10. Mannino, D. M. et al., "Surveillance for Asthma—United States, 1980–1999," *Morbidity and Mortality Weekly Report*, 51(SS01):1–13, March 29, 2002.

11. Analysis completed by FDA based on information provided by IMS Health, IMS National Sales Perspective (TM), 2009, extracted September 2009. These data can be purchased from IMS Health. Please send all inquiries to: IMS Health, Attn: Brian Palumbo, Account Manager, 660 West Germantown Pike, Plymouth Meeting, PA 19462.

12. Rozek, R. P., and E. R. Bishko, "Economic Issues Raised in the FDA's Proposed Rule on Removing the Essential-Use Designation for Albuterol MDIs," National Economic Research Associates, August 13, 2004 (FDA Docket No. 2003P–0029/C25).

13. Hendeles, L. G., L. Colice, and R. J. Meyer, "Withdrawal of Albuterol Inhalers Containing Chlorofluorocarbon Propellants," *New England Journal of Medicine*, 356:1344–1351, March 29, 2007.

14. Goldman, D. P. et al., "Pharmacy Benefits and the Use of Drugs by the Chronically Ill," *The Journal of the American Medical Association*, 291:2344–2350, May 19, 2004.

15. DeNavas-Walt, C., B. D. Proctor, and J. C. Smith, U.S. Census Bureau, Current Population Reports, P60–236(RV), Income, Poverty, and Health Insurance Coverage in the United States: 2008, Table 7, p. 21, 2009.

#### List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and the Clean Air Act and under authority delegated to the Commissioner of Food and Drugs, after consultation with the Administrator of the Environmental Protection Agency, 21 CFR part 2 is amended as follows:

#### PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

■ 1. The authority citation for 21 CFR part 2 continues to read as follows:

**Authority:** 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

#### § 2.125 [Amended]

■ 2. Effective June 14, 2010, in § 2.125, remove and reserve paragraphs (e)(2)(iii) and (e)(4)(vii).

#### § 2.125 [Amended]

■ 3. Effective December 31, 2010, in § 2.125, remove and reserve paragraphs (e)(1)(v) and (e)(4)(iv).

#### § 2.125 [Amended]

■ 4. Effective June 30, 2011, in § 2.125, remove and reserve paragraph (e)(1)(iii).

#### § 2.125 [Amended]

■ 5. Effective December 31, 2013, in § 2.125, remove and reserve paragraphs (e)(2)(iv) and (e)(4)(viii).

Dated: April 8, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010–8467 Filed 4–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

#### DEPARTMENT OF THE TREASURY

#### 31 CFR Part 103

**RIN 1506–AA93**

#### Financial Crimes Enforcement Network; Amendment to the Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions.

**AGENCY:** Financial Crimes Enforcement Network ("FinCEN"), Treasury.

**ACTION:** Final rule.

**SUMMARY:** FinCEN is issuing this final rule to include mutual funds within the general definition of "financial institution" in regulations implementing the Bank Secrecy Act ("BSA"). The final rule subjects mutual funds to rules under the BSA on the filing of Currency Transaction Reports ("CTRs") and on the creation, retention, and transmittal of records or information for transmittals of funds. Additionally, the final rule amends the definition of mutual fund in the rule requiring mutual funds to establish anti-money laundering ("AML") programs. The amendment harmonizes the definition of mutual fund in the AML program rule with the definitions found in the other BSA rules to which mutual funds are subject. Finally, the final rule amends the rule that delegates authority to examine institutions for compliance with the BSA. The amendment makes it clear that FinCEN has not delegated to the Internal Revenue Service the authority to examine mutual funds for compliance with the BSA, but rather to the U.S. Securities and Exchange Commission ("SEC") as the federal functional regulator of mutual funds.

**DATES:** Effective Date: This rule is effective May 14, 2010.

Compliance Date: Mutual funds must comply with 31 CFR 103.33 by January 10, 2011. The compliance date for all other aspects of this rulemaking is the same as the effective date.

**FOR FURTHER INFORMATION CONTACT:** The FinCEN regulatory helpline at (800) 949–2732 and select Option 6.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

##### A. Statutory Provisions.

The Bank Secrecy Act, Public Law 91–508, codified as amended at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332, authorizes the Secretary of the Treasury ("Secretary") to issue regulations requiring financial institutions to keep records and file reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.<sup>1</sup> Regulations implementing the BSA appear at 31 CFR part 103. The authority of the Secretary to administer the BSA has been delegated to the Director of FinCEN.

The definition of "financial institution" in the BSA includes investment companies.<sup>2</sup> The Investment Company Act of 1940, codified at 15 U.S.C. 80a–1 *et seq.* (the "Investment Company Act"), defines "investment company"<sup>3</sup> and subjects investment companies to regulation by the SEC.

##### B. Overview of Current Regulatory Provisions.

Regulations implementing the BSA currently apply only to investment companies that are "open-end companies," as the term is defined in the Investment Company Act. More commonly known as mutual funds, open-end companies are the predominant type of investment company. Open-end companies are management companies that offer or have outstanding securities that are redeemable at net asset value.<sup>4</sup>

Although FinCEN has issued individual rules that apply to mutual funds,<sup>5</sup> FinCEN has not included

<sup>1</sup> Language expanding the scope of the BSA was added by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 ("USA PATRIOT Act"), Public Law 107–56.

<sup>2</sup> 31 U.S.C. 5312(a)(2)(I).

<sup>3</sup> See 15 U.S.C. 80a–3.

<sup>4</sup> 15 U.S.C. 80a–4; 15 U.S.C. 80a–5(a)(1); 15 U.S.C. 80a–2(a)(32). Face-amount certificate companies and unit investment trusts are excluded from the definition of "management company." 15 U.S.C. 80a–4(3).

<sup>5</sup> *Anti-Money Laundering Programs for Mutual Funds*, 67 FR 21117 (April 29, 2002); *Customer Identification Programs for Mutual Funds*, 68 FR 25131 (May 9, 2003); *Amendment to the Bank Secrecy Act Regulations—Requirement That Mutual Funds Report Suspicious Activity*, 71 FR 26213 (May 4, 2006); *Anti-Money Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts*, 71 FR 496 (Jan. 4, 2006); *Anti-Money*

Continued

mutual funds within the definition of “financial institution” at 31 CFR 103.11(n), which is less inclusive than the definition in the BSA itself.<sup>6</sup> The definition of “financial institution” at 31 CFR 103.11(n) determines, among other things, the scope of rules that require the filing of CTRs and the creation, retention, and transmittal of records or information on transmittals of funds and other specified transactions.<sup>7</sup>

## II. Notice of Proposed Rulemaking and Comments

On June 5, 2009, FinCEN published a notice of proposed rulemaking (the “Notice”) that proposed including mutual funds within the general definition of financial institution at 31 CFR 103.11(n).<sup>8</sup> The proposed rule would subject mutual funds to rules on the filing of CTRs and on the creation, retention, and transmittal of records or information for transmittals of funds.<sup>9</sup> The comment period for the Notice ended on September 3, 2009. FinCEN received three comment letters from various industry associations.<sup>10</sup> All of the commenters supported the proposed rule and offered many reasons why including mutual funds within the definition of “financial institution” at 31 CFR 103.11(n) is appropriate. These reasons are discussed below in greater detail in the section-by-section analysis. All of the commenters requested additional time to comply with the Recordkeeping and Travel Rule requirements that would be imposed under 31 CFR 103.33.

## III. Section-by-Section Analysis

### A. Sections 103.11(n)(10) and 103.11(ccc)—Mutual Funds Move From Filing Reports on Form 8300 to the Currency Transaction Report

The final rule adds mutual funds to the definition of “financial institution” at 31 CFR 103.11(n)(10). The final rule defines a “mutual fund” for this purpose at 31 CFR 103.11(ccc). The definition of

“mutual fund” covers only those entities registered or required to register with the SEC. Specifically, “mutual fund” is defined as:

an “investment company” (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) registered or required to register with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

There were no comments concerning the definition of mutual fund. FinCEN is adopting the definition as proposed.

The final rule has the effect of replacing a mutual fund’s requirement to file a Form 8300 with a requirement to file a CTR under 31 CFR 103.22.<sup>11</sup> A mutual fund will now be required to file a CTR for a transaction involving a transfer of more than \$10,000 in currency by, through, or to the mutual fund.<sup>12</sup> The CTR filing obligation covers incoming, outgoing, and exchange transactions in currency. The definition of “currency” for purposes of the CTR rule is different from and less inclusive than the definition of “currency” in the Form 8300 rule.<sup>13</sup> Under the CTR rule, a financial institution must treat multiple transactions as a single transaction if the financial institution has knowledge that the transactions are conducted by or on behalf of the same person.<sup>14</sup>

In the Notice, FinCEN asserted that the volume of Form 8300s filed is relatively low when compared to the overall volume of mutual fund transactions.<sup>15</sup> Commenters also concurred with FinCEN that since mutual funds are subject to SAR reporting requirements, the ability to

report suspicious transactions on a Form 8300 is redundant.<sup>16</sup>

In the Notice, FinCEN requested comment on the anticipated time and monetary savings that could result from replacing the requirement to file reports on Form 8300 with a requirement to file CTRs. One commenter stated that requiring mutual funds to file CTRs instead of Form 8300s would streamline and reduce overall compliance burdens for mutual funds and could aid in facilitating enterprise-wide risk management programs. Commenters were in agreement that requiring mutual funds to file CTRs instead of Form 8300s should reduce the expense and burden of reporting for mutual funds and their transfer agents,<sup>17</sup> and one commenter stated that there likely will be greater efficiency in larger entities that have staff and systems in place to produce CTR filings.

FinCEN also requested comment on the nature, volume, content, and value of any potentially lost information to law enforcement, tax, regulatory, and counter-terrorism investigations or activities that could result from this rulemaking. FinCEN did not receive any comments specific to this request. One commenter, however, stated generally that requiring mutual funds to file CTRs, rather than Form 8300s, would not diminish the quality or quantity of useful BSA data reported by mutual funds.

### B. Section 103.33—The Recordkeeping and Travel Rule and Related Recordkeeping Requirements

The final rule subjects mutual funds to requirements on the creation and retention of records for transmittals of funds, and the requirement to transmit

*Laundering Programs; Special Due Diligence Programs for Certain Foreign Accounts*, 72 FR 44768 (Aug. 9, 2007).

<sup>6</sup> See 31 U.S.C. 5312(a)(2).

<sup>7</sup> See 31 CFR 103.22; 31 CFR 103.28; 31 CFR 103.29; 31 CFR 103.33; and 31 CFR 103.38. Defining a business as a financial institution would make the business ineligible for exemption from a bank’s requirement to file CTRs with respect to the business’ large cash transactions. See 31 CFR 103.22(d)(5)(viii).

<sup>8</sup> *Amendment to the Bank Secrecy Regulations; Defining Mutual Funds as Financial Institutions*, 74 FR 26996 (June 5, 2009).

<sup>9</sup> See 31 CFR 103.22; 31 CFR 103.28; 31 CFR 103.29; 31 CFR 103.33; and 31 CFR 103.38.

<sup>10</sup> All comments to the Notice are available for public viewing at <http://www.regulations.gov> or [http://www.fincen.gov/statutes\\_regs/bsa/regs\\_proposal\\_comment.html](http://www.fincen.gov/statutes_regs/bsa/regs_proposal_comment.html).

<sup>11</sup> 31 CFR 103.30(a)(1)(ii) (the requirement to file a Form 8300 does not apply to transactions reported under 31 CFR 103.22).

<sup>12</sup> 31 CFR 103.22(b)(1).

<sup>13</sup> See 31 CFR 103.11(h) (currency is defined as the coin and paper of the United States or of any other country that is designated as legal tender and that circulates and is customarily used as a medium of exchange in a foreign country).

<sup>14</sup> 31 CFR 103.22(c)(2). The obligation to file a CTR is conditioned on knowledge that the transactions are conducted by or on behalf of the same person and result in either cash in or cash out totaling more than \$10,000 during any one business day. The threshold in 31 CFR 103.22 applies to transactions conducted during a single business day, whereas the requirement to file a Form 8300 can cover transactions that occur over a longer period of time. See 31 CFR 103.22(c)(2) and 31 CFR 103.30(c)(12)(ii).

<sup>15</sup> A review of BSA data revealed that while hundreds of millions of transactions involving mutual funds were conducted in calendar years 2004, 2005, 2006, and 2007, fewer than 19,500 Form 8300s were filed by mutual funds over the same period.

<sup>16</sup> FinCEN also offered that because mutual funds rarely receive from or disburse to shareholders significant amounts of currency, mutual funds are not as likely as depository institutions to be used during the initial “placement” stage of the money laundering process. *Amendment to the Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions*, 74 FR 26,996, 26,998 (June 5, 2009). Two commenters agreed with FinCEN. A third commenter stated that the terms and conditions of the mutual fund account, rather than the type of financial institution offering such product, is more likely to determine whether a mutual fund can be used to place illicit funds in the financial system.

<sup>17</sup> FinCEN has recognized the role of transfer agents in performing BSA compliance functions. See e.g., 67 FR 2117, (April 29, 2002) (adopting release for mutual fund Anti-Money Laundering Program rule), 68 FR 25131, (May 9, 2003) (adopting release for mutual fund Customer Identification Program rule), 71 FR 26213, (May 4, 2006) (adopting release for mutual fund SAR rule). Many mutual funds contractually delegate their BSA compliance functions, including recordkeeping, to transfer agents, although the mutual fund remains responsible under the BSA for ensuring compliance.

information on these transactions to other financial institutions in the payment chain ("Recordkeeping and Travel Rule").<sup>18</sup> The Recordkeeping and Travel Rule applies to transmittals of funds in amounts that equal or exceed \$3,000,<sup>19</sup> and requires the transmitter's financial institution to obtain and retain name, address, and other information on the transmitter and the transaction.<sup>20</sup> Furthermore, the Recordkeeping and Travel Rule requires the recipient's financial institution—and in certain instances, the transmitter's financial institution—to obtain or retain identifying information on the recipient.<sup>21</sup> The Recordkeeping and Travel Rule requires that certain information obtained or retained by the transmitter's financial institution "travel" with the transmittal order through the payment chain.<sup>22</sup>

FinCEN will adopt as proposed the inclusion of mutual funds within an existing exception designed to exclude from the Recordkeeping and Travel Rule's coverage funds transfers or transmittal of funds in which certain categories of financial institution are the transmitter, originator, recipient, or beneficiary.<sup>23</sup> Additionally, the final rule subjects mutual funds to requirements on the creation and retention of records for extensions of credit and cross-border transfers of currency, monetary instruments, checks, investment securities, and credit.<sup>24</sup> These requirements apply to transactions in amounts exceeding \$10,000.

Mutual funds are subject to record retention requirements under the

Investment Company Act, and mutual fund transfer agents are subject to recordkeeping requirements under the Securities Exchange Act of 1934.<sup>25</sup> In light of these existing regulatory obligations, FinCEN stated in the Notice that the requirements of 31 CFR 103.33 and 31 CFR 103.38 would have a *de minimus* impact on mutual funds and their transfer agents.<sup>26</sup> Furthermore, rules under the BSA on the establishment of customer identification programs by mutual funds and on the reporting by mutual funds of suspicious transactions impose requirements to create and retain records.<sup>27</sup>

FinCEN also requested comment on the anticipated impact of subjecting mutual funds to the requirements of the Recordkeeping and Travel Rule. All three commenters noted that subjecting mutual funds to the requirements of the Recordkeeping and Travel Rule will require mutual funds to implement changes to their transaction processing and recordkeeping systems. One commenter stated that the impact of the Recordkeeping and Travel Rule requirements on a mutual fund and its transfer agent may vary significantly, and that the impact will depend on such factors as the transaction processing and recordkeeping systems currently in place, the size of the mutual fund complex, and how the mutual fund shares are distributed. Other commenters stated that subjecting mutual funds to the requirements of the Recordkeeping and Travel Rule would have a greater impact on smaller mutual funds.

All commenters requested additional time to comply with the Recordkeeping and Travel Rule. Such an extension would provide mutual funds with an opportunity to implement changes to their transaction reporting and recordkeeping systems. Generally, commenters suggested an extension of between 18 to 24 months. FinCEN has determined that extending the compliance date with respect to the requirements of the Recordkeeping and Travel Rule to 270 days after the rule is published in the **Federal Register** is appropriate.

### *C. Section 103.130(a)—Amending the Definition of "Mutual Fund" in the AML Program Rule for Mutual Funds*

FinCEN is amending the definition of "mutual fund" at 31 CFR 103.130(a) by including an explicit reference to open-end companies "registered or required to register under section 8 of the Investment Company Act." The amended definition of mutual fund harmonizes the definition in the anti-money laundering program rule with the definitions in the customer identification program rule for mutual funds, enhanced due diligence program rule for certain foreign accounts, and suspicious activity reporting rule for mutual funds.<sup>28</sup> Rules requiring the establishment of customer identification and enhanced due diligence programs impose requirements that are programmatic in nature. It was FinCEN's intent that the definition of "mutual fund" at 31 CFR 103.130(a) include only those entities registered or required to register with the SEC. Paragraph (a) of section 103.130 will define a mutual fund as follows:

an "investment company" (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a-3)) that is an "open-end company" (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a-5)) registered or required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a-8).

### *D. Section 103.56(b)(8)—Excluding Mutual Funds From the Delegation of Examination Authority to the Internal Revenue Service*

FinCEN is amending 31 CFR 103.56(b)(8) by including mutual funds within the list of financial institutions the Internal Revenue Service lacks the authority to examine for compliance with the BSA. The definition of "mutual fund" at 31 CFR 103.11(ccc) will apply to this provision.

The SEC examines mutual funds for compliance with the Investment Company Act, and FinCEN has delegated to the SEC the authority to examine mutual funds for compliance with the BSA.<sup>29</sup> The SEC has expertise in the operations of mutual funds and experience addressing the adequacy of mutual fund compliance programs. Mutual funds are subject to rules under the Investment Company Act that require the implementation of internal controls and other aspects of a

<sup>18</sup> See 31 CFR 103.33(f) and (g). Financial institutions must retain records for a period of five years. 31 CFR 103.38(d).

<sup>19</sup> Rules under the BSA define a "transmittal of funds" and the persons or institutions involved in a "transmittal of funds." See 31 CFR 103.11(d), (e), (g), (r), (s), (v), (w), (cc), (dd), (jj), (kk), (ll), and (mm). A "transmittal of funds" includes funds transfers processed by banks, as well as similar payments where one or more of the financial institutions processing the payment is not a bank. If the mutual fund is processing a payment sent by or to its customer, then the mutual fund would be either the "transmitter's financial institution" or the "recipient's financial institution."

<sup>20</sup> See 31 CFR 103.33(f)(1)(i) and (f)(2).

<sup>21</sup> See 31 CFR 103.33(f)(3) (information that the recipient's financial institution must obtain or retain).

<sup>22</sup> See 31 CFR 103.33(g) (information that must "travel" with the transmittal order); 31 CFR 103.11(kk) (defining "transmittal order").

<sup>23</sup> See 31 CFR 103.33(e)(6)(i) and 31 CFR 103.33(f)(6)(i). The inclusion of mutual funds within the exceptions is intended to provide mutual funds with treatment similar to that of banks, brokers or dealers in securities, futures commission merchants, and introducing brokers in commodities.

<sup>24</sup> See 31 CFR 103.33(a)–(c). Financial institutions must retain these records for a period of five years. 31 CFR 103.38(d).

<sup>25</sup> See, e.g., 15 U.S.C. 80a-30 (mutual funds); 15 U.S.C. 78q(a)(3) (transfer agents).

<sup>26</sup> Amendment to Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions, 74 FR 26996, 26998 (June 5, 2009).

<sup>27</sup> See 31 CFR 103.131 (mutual funds must obtain and record identifying information for persons opening new accounts, and verify the identity of persons opening new accounts); 31 CFR 103.15(c) (mutual funds must maintain records of documentation that supports the filing of a SAR).

<sup>28</sup> 31 CFR 103.130(a), 103.131(a)(5), 103.175(f)(1)(x), 103.15(a).

<sup>29</sup> See 31 CFR 103.56(b)(6) (examination authority under the BSA is delegated to the SEC with respect to "investment companies," as the term is defined in the Investment Company Act).

compliance program.<sup>30</sup> Examinations by the Internal Revenue Service would result in duplication of effort and limited benefit in terms of increased compliance.

#### IV. Notice and Comment Under the Administrative Procedure Act

The Notice did not propose amendments to 31 CFR 103.130(a) and 31 CFR 103.56(b)(8). Under the Administrative Procedure Act, notice of a proposed rulemaking is not required for “rules of agency organization, procedure, or practice,” or when the agency, for good cause, finds “that notice and public procedure thereon are impractical, unnecessary, or contrary to the public interest.”<sup>31</sup> The amendment to 31 CFR 103.56(b)(8) is a “rule of agency organization, procedure, or practice.” Furthermore, for the reasons stated above, FinCEN finds that publishing the amendments to 31 CFR 103.130(a) and 31 CFR 103.56(b)(8) for comment is “unnecessary and contrary to the public interest.”<sup>32</sup>

#### V. Proposed Location in Chapter X

In accordance with the November 7, 2008 notice of proposed rulemaking pertaining to a restructuring of its regulations in a new chapter in the Code of Federal Regulations,<sup>33</sup> FinCEN is separately proposing to remove Part 103 of Chapter I of Title 31, Code of Federal Regulations, and add Parts 1000 to 1099 (Chapter X). In the proposed Chapter X, the definition of mutual fund will be located at 1010.100(gg) and inserted into the definition of “financial institution” at 1010.100(t)(10). The planned reorganization would have no substantive effect on the final rule herein. The final rule herein would be renumbered according to the structure established via the finalization of the Chapter X rule.

#### VI. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act (“RFA”) (5 U.S.C. 601 *et seq.*),

<sup>30</sup> 17 CFR 270.30a–3 (registered investment companies must implement disclosure controls, and procedures and internal controls over financial reporting.); 17 CFR 270.38a–1 (registered investment companies must implement written policies and procedures reasonably designed to ensure compliance with the federal securities laws).

<sup>31</sup> 5 USC 553(b).

<sup>32</sup> For similar reasons, the amendment to 31 CFR 103.56(b)(8) does not require analysis under the Regulatory Flexibility Act or analysis of major rule status under the Small Business Regulatory Enforcement Fairness Act. 5 USC 804(3)(C) (for purposes of Congressional review of agency rulemaking, the term “rule” does not include any rule of agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties).

<sup>33</sup> *Transfer and Reorganization of Bank Secrecy Act Regulations*, 73 FR 66414 (Nov. 7, 2008).

FinCEN certifies that the final rule will not have a significant economic impact on a substantial number of small entities. The economic impact of the final rule on small entities should not be significant. Mutual funds, regardless of their size, are already required to comply with many of the rules under the BSA that currently exist. While all mutual funds are captured under this rulemaking, the estimated burden associated with defining mutual funds as financial institutions is minimal. FinCEN believes that mutual funds rarely receive from or disburse to shareholders significant amounts of currency. As discussed above, FinCEN and commenters anticipate that moving mutual funds from a Form 8300 filing requirement to a CTR filing requirement will reduce the regulatory burden on all mutual funds. Finally, mutual funds are already subject to record retention requirements under the Investment Company Act, and mutual fund transfer agents are subject to recordkeeping requirements under the Securities Exchange Act of 1934.

In the Notice, FinCEN requested comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities. FinCEN received one letter commenting on FinCEN’s certification under the RFA. This commenter stated that the requirements of 31 CFR 103.33 might have a significant economic impact on small mutual funds. The commenter noted that most of the larger mutual funds already have affiliations with other financial institutions and that these financial institutions have systems in place enabling mutual funds to achieve economies. The commenter suggested that FinCEN consider a phased-in requirement to allow smaller mutual funds additional time to comply with the requirements of 31 CFR 103.33. FinCEN believes that this rulemaking will not have a significant impact on a substantial number of small mutual funds. FinCEN, however, has determined that a delayed compliance date to allow all mutual funds to make changes to their recordkeeping and transaction reporting systems in order to comply with the requirements of 31 CFR 103.33 is appropriate. FinCEN has, therefore, extended the compliance date with respect to the requirements of 31 CFR 103.33 to 270 days after the rule is published in the **Federal Register**.

#### VII. Executive Order 12866

It has been determined that the final rule is not a “significant regulatory action” for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

#### VIII. Paperwork Reduction Act

The collection of information contained in this final rule has been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1506–0004. Based on comments received the collection of information as required by 31 CFR 103.22 will likely reduce the reporting burden for mutual funds. Commenters did not state that the collection of information as required by 31 CFR 103.33 would result in an increased burden for mutual funds.

*Description of Affected Financial Institutions:* “Mutual funds” as defined in 31 CFR 103.11(ccc).

*Estimated Number of Affected Financial Institutions:* 8,029.<sup>34</sup>

*Estimated Average Annual Burden Hours per Affected Financial Institution:* The estimated average burden associated with the collection of information in this notice is one-hour recordkeeping per response per affected financial institution.<sup>35</sup>

*Estimated Total Annual Burden:* 8,029 hours.<sup>36</sup>

In the Notice, FinCEN invited comment on whether the collection of information in the final rule is necessary for the proper performance of FinCEN’s mission.<sup>37</sup> Commenters did not address the issue specifically. However, all commenters stated that subjecting mutual funds to 31 CFR 103.22, and relieving mutual funds of the obligation to file reports on Form 8300, will reduce the reporting burden on mutual funds. All commenters noted that requiring mutual funds to comply with 31 CFR 103.33 could have an impact on small mutual funds. As discussed above in the section by section analysis, all commenters requested a delayed compliance date for 31 CFR 103.33 to allow mutual funds time to implement changes to their transaction reporting and recordkeeping systems. FinCEN has determined that all mutual funds should

<sup>34</sup> See Investment Company Institute (ICI) 2008 *Investment Company Fact Book*, at 110 (2008), available at: [http://www.icifactbook.org/pdf/2008\\_factbook.pdf](http://www.icifactbook.org/pdf/2008_factbook.pdf) (number of mutual funds in the U.S. in 2007).

<sup>35</sup> The single hour is based on an estimate of 45 minutes to complete the CTR form and 15 minutes for recordkeeping and archiving.

<sup>36</sup> While it is not industry practice for mutual funds to accept cash, there is no restriction on mutual funds that prohibits mutual funds from accepting cash. Therefore, for purposes of estimating the annual burden the filing of CTRs will have on mutual funds, FinCEN estimates that each mutual fund will file one CTR per year.

<sup>37</sup> *Amendment to Bank Secrecy Act Regulations; Defining Mutual Funds as Financial Institutions*, 74 FR 26996, 26999 (June 5, 2009).



be granted additional time to comply with 31 CFR 103.33.

Under the Paperwork Reduction Act, an agency may not conduct or sponsor a collection of information, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number.

#### List of Subjects in 31 CFR Part 103

Administrative practice and procedure, Banks and banking, Brokers, Currency, Foreign banking, Foreign currencies, Gambling, Investigations, Penalties, Reporting and recordkeeping requirements, Securities, Terrorism.

#### Amendment

■ For the reasons set forth above in the preamble, 31 CFR part 103 is amended as follows:

#### PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

■ 1. The authority citation for part 103 continues to read as follows:

**Authority:** 12 U.S.C. 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

#### Subpart A—Definitions

■ 2. Amend § 103.11 by revising paragraph (n)(9); and by adding paragraphs (n)(10) and (ccc):

##### § 103.11 Meaning of Terms.

\* \* \* \* \*

(n) \* \* \*

(9) An introducing broker in commodities;

(10) A mutual fund.

\* \* \* \* \*

(ccc) *Mutual fund* means an “investment company” (as the term is defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) registered or required to register with the Securities and Exchange Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

\* \* \* \* \*

#### Subpart C—Records Required To Be Maintained

■ 3. Amend § 103.33 by revising paragraphs (e)(6)(i)(I) and (f)(6)(i)(I); and by adding paragraphs (e)(6)(i)(J) and (f)(6)(i)(J), to read as follows:

##### § 103.33 Records to be made and retained by financial institutions.

\* \* \* \* \*

(e) \* \* \*

(6) \* \* \*

(i) \* \* \*

(I) A Federal, State or local government agency or instrumentality; or

(J) A mutual fund; and

\* \* \* \* \*

(f) \* \* \*

(6) \* \* \*

(i) \* \* \*

(I) A federal, state or local government agency or instrumentality; or

(J) A mutual fund; and

\* \* \* \* \*

#### Subpart I—Anti-Money Laundering Programs

■ 4. Section 103.130 is amended by revising paragraph (a) to read as follows:

##### § 103.130 Anti-money laundering programs for mutual funds.

\* \* \* \* \*

(a) For purposes of this section mutual fund means an “investment company” (as that term is defined in section 3 of the Investment Company Act (15 U.S.C. (15 U.S.C. 80a–3)) that is an “open-end company” (as that term is defined in section 5 of the Investment Company Act (15 U.S.C. 80a–5)) registered or required to register with the Commission under section 8 of the Investment Company Act (15 U.S.C. 80a–8).

\* \* \* \* \*

#### Subpart E—General Provisions

■ 5. Section 103.56 is amended by revising paragraph (b)(8) to read as follows:

##### § 103.56 Enforcement.

\* \* \* \* \*

(b) \* \* \*

(8) To the Commissioner of Internal Revenue with respect to all financial institutions, except brokers or dealers in securities, mutual funds, futures commission merchants, introducing brokers in commodities, and commodity trading advisors, not currently examined by Federal bank supervisory agencies for soundness and safety; and

\* \* \* \* \*

Dated: April 8, 2010.

**James H. Freis, Jr.,**

*Director, Financial Crimes Enforcement Network.*

[FR Doc. 2010–8500 Filed 4–13–10; 8:45 am]

**BILLING CODE 4810–02–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2010–0217]

#### Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Berkley Bridge (I–264), across the Elizabeth River, Eastern Branch, mile 0.4, at Norfolk, VA. The deviation is necessary to facilitate structural repairs to the lift spans. This deviation allows the drawbridge to remain in the closed to navigation position.

**DATES:** This deviation is effective from 8 p.m. on April 23, 2010 through 4:30 a.m. on June 21, 2010.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0217 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0217 in the “Keyword” box and then clicking “Search”. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone 757–398–6587, e-mail [Terrance.A.Knowles@uscg.mil](mailto:Terrance.A.Knowles@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Virginia Department of Transportation, who owns and operates this bascule-type drawbridge, has requested a temporary deviation from the current operating regulations set out in 33 CFR 117.1007(b) and (c) to facilitate the resurfacing of the bridge roadway, as modified by the temporary deviation at Docket No. USCG–2010–0083, published in the **Federal Register** on March 3, 2010, 75 Fed. Reg. 9521.

The Berkley Bridge (I-264) at mile 0.4, across the Elizabeth River, Eastern Branch, in Norfolk, VA, has a vertical clearance in the closed position of 48 feet above mean high water.

Under this temporary deviation, the drawbridge will be maintained in the closed to navigation position on four separate weekends beginning at 8 p.m. on Fridays until and including 4:30 a.m. on Mondays from April 23–26, 2010; April 30–May 3, 2010; May 14–17, 2010; and from June 4–7, 2010. In addition, if severe or inclement weather occurs, the alternate closure dates will be rescheduled to May 7–10, 2010 and/or June 18–21, 2010. During these closure periods, vessel openings of the draw spans along with the removal of barges in the waterway will be provided if at least two hours advance notice is given to the bridge operator at (757) 494–2490. No marine events are scheduled during these time periods and the waterway will still allow for the passage of vessels of heights less than 48 feet.

Smaller vessels that can pass under the bridge without a bridge opening may do so at most times. There are no alternate routes for vessels transiting this section of the Eastern Branch of the Elizabeth River. The bridge can be opened for emergencies but may be delayed by two hours.

The waterway users are large commercial vessels, tugs, barges, and smaller leisure craft. The Berkley Bridge opens rarely on weekends for larger commercial vessels, approximately 2–3 times/weekend. The Coast Guard has coordinated the restrictions with the commercial and recreational waterway users. Additionally, the Coast Guard will inform unexpected users of the waterway through our local and broadcast Notices to Mariners of the closure periods for the bridge so that vessels can arrange their transits to minimize any impacts caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 1, 2010.

**Patrick B. Trapp,**

*Captain, United States Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 2010–8476 Filed 4–13–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG–2009–0809]

RIN 1625–AA00

#### Safety Zone; Desert Storm, Lake Havasu, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone within the Thompson Bay region of the navigable waters of the Colorado River in Lake Havasu, Lake Havasu City, Arizona in support of the Desert Storm Exhibition Run. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from 8 a.m. on April 23, 2010 through 5:30 p.m. on April 25, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0809 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0809 in the “Keyword” box, and then clicking “Search.” They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7267, e-mail [Shane.E.Jackson@uscg.mil](mailto:Shane.E.Jackson@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act

(APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists, as publishing a notice of proposed rulemaking (NPRM) with respect to this rule would be impracticable, because immediate action is necessary to ensure the safety of the crew, spectators, and other vessels and users of the waterway.

#### Background and Purpose

The Lake Racer LLC is sponsoring the Desert Storm Charity Poker Run and Exhibition Run, which is to be held on Thompson Bay region of the Colorado River in Lake Havasu City, Arizona. A temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway. This event involves powerboats participating in an exhibition run on a closed course. The size of the boats varies from 21 to 55 feet. Approximately 150 to 200 boats will participate in this event. The sponsor will provide 2 rescue boats and 20 safety patrol boats, along with EMT and Rescue divers, for the safety of this event.

#### Discussion of Rule

The Coast Guard is establishing a safety zone that will be enforced from 8:00 a.m. on April 23, 2010 to 5:30 p.m. on April 25, 2010. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the regatta and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. This temporary safety zone extends to the area encompassed by the following coordinates:

34°27.84' N, 114°20.64' W;  
34°27.76' N, 114°20.80' W;  
34°27.58' N, 114°20.81' W;  
34°26.11' N, 114°19.17' W; and  
34°26.42' N, 114°18.90' W.

The Coast Guard may be assisted by the other federal, state, or local agencies, including the Coast Guard Auxiliary. Vessel or persons violating this section will be subject to both criminal and civil penalties.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and

executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### **Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This determination is based on the duration and location of the safety zone. The safety zone will only be in effect a short time. Vessels will be allowed to transit through the designated safety zone during the specified times if they are authorized to do so from the Captain of the Port or his designated representative.

### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the lower Colorado River from 8 a.m. on April 23, 2010 through to 5:30 p.m. on April 25, 2010.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone will apply to the entire width of the river, traffic will be allowed to pass through the zone with the permission of the Coast Guard patrol commander. There will be escort vessels for vessel traffic to pass through the zone once authorized to do so by the Captain of the Port or his designated representative. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via Marine Channel 16 VHF before the safety zone is enforced.

### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### **Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### **Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### **Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### **Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### **Indian Tribal Governments**

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### **Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### **Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishing a safety zone for a marine event. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11-297 to read as follows:

#### § 165.T11-297 Safety zone; Desert Storm, Lake Havasu, AZ

(a) *Location.* The location of the safety zone includes all waters of Thompson Bay of the Colorado River and land adjacent to those waters encompassed by the following coordinates

34°27.84' N, 114°20.64' W;  
34°27.76' N, 114°20.80' W;  
34°27.58' N, 114°20.81' W;  
34°26.11' N, 114°19.17' W; and  
34°26.42' N, 114°18.90' W.

(b) *Enforcement period.* This rule will be enforced from 8 a.m. on April 23, 2010, to 5:30 p.m. on April 25, 2010. If the need for the safety zone ends before the scheduled termination times, the Captain of the Port will cease enforcement of this safety zone.

(c) *Definitions.* The following definition applies to this section: *designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The PATCOM may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, state, or local agencies.

Dated: March 27, 2010.

T.H. Farris,

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2010-8478 Filed 4-13-10; 8:45 am]

BILLING CODE 9110-04-P

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0213]

RIN 1625-AA00

**Subject: Safety Zone; Sea World Summer Nights Fireworks, Mission Bay, San Diego, CA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone on the navigable waters of Mission Bay in support of the Sea World Summer Nights Fireworks. This safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless

authorized by the Captain of the Port, or his designated representative.

**DATES:** This rule is effective from March 27, 2010 through September 6, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2010-0213 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-0213 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Corey McDonald, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619-278-7262, e-mail [Corey.R.McDonald@uscg.mil](mailto:Corey.R.McDonald@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

#### Background and Purpose

Sea World is sponsoring the Sea World Summer Nights Fireworks, which

will include a fireworks presentation from a barge in Mission Bay. A temporary safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

#### Discussion of Rule

The Coast Guard is establishing a temporary safety zone that will be enforced from 8:50 p.m. to 10 p.m. on March 27, 2010 through September 6, 2010. The limits of the safety zone are a 600 foot radius around the barge in approximate position 32°46'03" N, 117°13'11" W. The safety zone is necessary to provide for the safety of the crew, spectators, participants, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative. Before the effective period, the coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

#### Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the enforcement and location of the safety zone. Vessels will be able to transit around the safety zone. Furthermore, this safety zone will only be enforced from 8:50 p.m. through 10 p.m. nightly, so vessels can transit the zone during other periods. Persons and vessels will be allowed to transit through the designated safety zone during the specified times if they receive

permission from the Captain of the Port or his designated representative.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can pass safely around the safety zone. Before the effective period, the coast Guard will publish a local notice to mariners (LNM) and will issue broadcast notice to mariners (BNM) alerts via marine channel 16 VHF before the safety zone is enforced.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because

it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (34)(g), of the Instruction. This rule involves establishment of a safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11-304 to read as follows:

#### § 165.T11-304 Safety zone; Sea World Summer Nights Fireworks; Mission Bay, San Diego, California.

(a) *Location.* The limits of the safety zone will include a 600 foot radius around the barge in approximate position 32°46'03" N, 117°13'11" W.

(b) *Enforcement Period.* This section will be enforced from 8:50 p.m. to 10 p.m. on March 27, 2010 through September 6, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Sector San Diego Command Center. The Command Center may be contacted on VHF-FM Channel 16.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: March 29, 2010.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2010-8530 Filed 4-13-10; 8:45 am]

**BILLING CODE 9110-04-P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2009-1111]

RIN 1625-AA00

#### Safety Zone; BWRC Spring Classic, Parker, AZ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone within the Lake Moolvalya region of the navigable waters of the Colorado River in Parker, Arizona for the Blue Water Resort and Casino Spring Classic. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels, and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port or his designated representative.

**DATES:** This rule is effective from 6 a.m. on April 16, 2010 through 6 p.m. on April 18, 2010.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket USCG-2009-1111 and are available online by going to <http://www.regulations.gov>, inserting USCG-2009-1111 in the "Keyword" box, and then clicking "Search." They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary rule, call or e-mail Petty Officer Shane Jackson, Waterways Management, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619-278-7267, e-mail [Shane.E.Jackson@uscg.mil](mailto:Shane.E.Jackson@uscg.mil) If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act

(APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to ensure the safety of vessels, spectators, participants, and others in the vicinity of the marine event on the dates and times this rule will be in effect and delay would be contrary to the public interest.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public’s safety.

#### **Background and Purpose**

The Southern California Speedboat Club is sponsoring the Blue Water Resort and Casino Spring Classic, which is held on the Lake Moolvalya region on the Colorado River in Parker, Arizona. A temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users and vessels of the waterway. This event involves powerboats racing along a circular course. The size of the boats vary from 10 to 21 feet in length. Approximately 70 to 100 boats will be participating in this event. Additionally, the sponsor will provide two patrol and rescue boats and two river closure boats.

#### **Discussion of Rule**

The Coast Guard is establishing a safety zone that will be enforced from 6 a.m. on April 16, 2010 through 6 p.m. on April 18, 2010. This safety zone is necessary to provide for the safety of the crews, spectators, participants, and other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring with this safety zone unless authorized by the Captain of the Port, or his designated representative. This temporary safety zone will encompass the entire width of the Colorado River from Headgate Dam to 0.5 miles north of Blue Water Marina, Parker, Arizona. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

#### **Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### **Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone due to its brief duration. Furthermore, all vessels will be allowed to transit through the established safety zone during the specified times if authorized to do so by the Captain of the Port or his designated representative.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Colorado River from 6 a.m. on April 16, 2009 through 6 p.m. April 18, 2010.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. Although the safety zone would apply to the entire width of the river, traffic would be allowed to pass through the zone with the permission of the Coast Guard patrol commander. Before the effective period, the Coast Guard will publish a local notice to mariners (LNM).

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### **Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.



## Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

## Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

## Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this rule under Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the establishment of a safety zone.

An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under

## ADDRESSES.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–296 to read as follows:

### § 165.T11–296 Safety zone; BWRC Spring Classic, Parker, AZ

(a) *Location.* The limits of this temporary safety zone include all areas of the Colorado River from Headgate Dam to 0.5 miles north of the Bluewater Marine in Parker, Arizona.

(b) *Enforcement period.* This section will be enforced from 6 a.m. on April 16, 2010 to 6 p.m. on April 18, 2010. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *Designated representative*, means any

commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, State, and Federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated on-scene representative.

(2) Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander. The Patrol Commander may be contacted on VHF–FM Channel 83.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative.

(4) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(5) The Coast Guard may be assisted by other Federal, State, or local agencies.

Dated: March 27, 2010.

**T.H. Farris,**

*Captain, U.S. Coast Guard, Captain of the Port San Diego.*

[FR Doc. 2010–8479 Filed 4–13–10; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

[EPA–R06–OAR–2006–0851; FRL–9137–2]

### Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for the State of Louisiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; delegation of authority.

**SUMMARY:** The Louisiana Department of Environmental Quality (LDEQ) has submitted updated regulations for receiving delegation of EPA authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources. These regulations apply to certain NSPS promulgated by EPA, as amended through July 1, 2008; and certain NESHAPs promulgated by EPA, as amended through July 1, 2008. The



delegation of authority under this action does not apply to sources located in Indian Country. EPA is providing notice that it has approved delegation of certain NSPS to LDEQ, and taking direct final action to approve the delegation of certain NESHAPs to LDEQ.

**DATES:** This rule is effective on June 14, 2010 without further notice, unless EPA receives relevant adverse comment by May 14, 2010.

**ADDRESSES:** Submit your comments, identified by Docket No. EPA-R06-OAR-2006-0851, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.

- *E-mail*: Mr. Guy Donaldson at [donaldson.guy@epa.gov](mailto:donaldson.guy@epa.gov). Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax*: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7263.

- *Mail*: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand Delivery*: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-R06-OAR-2006-0851. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection at the State Air Agency listed below during official business hours by appointment:

Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70802.

**FOR FURTHER INFORMATION CONTACT:**

Kenneth W. Boyce, Air Planning Section, (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7259; fax number 214-665-7263; e-mail address [boyce.kenneth@epa.gov](mailto:boyce.kenneth@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Throughout this document, "we" "us" and "our" is used refer to EPA.

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**I. What Does This Action Do?**

EPA is providing notice that it is delegating authority for implementation and enforcement of certain NSPS to LDEQ. EPA is also taking direct final action to approve the delegation of certain NESHAPs to LDEQ. With these delegations, LDEQ will have the primary responsibility to implement and enforce the delegated standards under NSPS and NESHAPs.

**II. What Is the Authority for Delegation?**

Section 111(c)(1) of the Clean Air Act (CAA) authorizes EPA to delegate authority to any State agency which submits adequate regulatory procedures for implementation and enforcement of the NSPS program. The NSPS standards are codified at 40 CFR part 60.

Section 112(l) of the CAA and 40 CFR part 63, subpart E, authorizes EPA to delegate authority to any State or local agency which submits adequate regulatory procedures for implementation and enforcement of emission standards for hazardous air pollutants. The hazardous air pollutant standards are codified at 40 CFR parts 61 and 63.

**III. What Criteria Must Louisiana's Program Meet To Be Approved?**

EPA previously approved LDEQ's program for the delegation of NSPS February 22, 1982 (47 FR 07665). The delegation was most recently updated on March 26, 2004 (59 FR 15687). This action notifies the public that EPA is updating LDEQ's delegation to implement and enforce certain additional NSPS. The CAA, as amended, requires under section 111 that performance standards be set for source categories which in the judgment of the Administrator cause or contribute significantly to air pollution. The CAA precisely states that the States should have primary authority for implementing the NSPS program.

EPA will approve an air toxics program if we find that:

(1) The State program is “no less stringent” than the corresponding Federal program or rule;

(2) the State has adequate authority and resources to implement the program;

(3) the schedule for implementation and compliance is sufficiently expeditious; and

(4) the program otherwise complies with Federal guidance.

In order to obtain approval of its program to implement and enforce Federal section 112 rules as promulgated without changes (straight delegation), only the criteria of 40 CFR 63.91(d) must be met. 40 CFR 63.91(d)(3) provides that interim or final Title V program approval will satisfy the criteria of 40 CFR 63.91(d) for part 70 sources. Louisiana received its Title V approval on September 12, 1995 (60 FR 47296), effective October 12, 1995.

#### IV. What Is Being Delegated?

On August 14, 2009, EPA received a delegation request update for NSPS and NESHAP rules added to the CFR as of July 1, 2008, and certain rules issued after July 2008. The most recent update to NESHAP Delegation to be approved was approved and covered NESHAP regulations issued through July 1, 2004. The last update to the NSPS delegation to be approved was approved on March 26, 2004 and covered NSPS regulations that had been issued through July 1, 2002. With the exceptions noted below, the LDEQ’s rules incorporate by reference (IBR) the corresponding Federal regulations in 40 CFR parts 60, 61 and 63, into the Air Quality regulations, which are applicable in Louisiana that have been adopted through July 1, 2008. The Louisiana rules also incorporate by reference certain amendments to NSPS rules that were adopted after July 1, 2008. These are 40 CFR part 60, Stay of effective date of subpart Ja (73 FR 43626), amendments to subpart JJJJ (73 FR 59175), and amendments to subparts D, Da, Db, and Dc (74 FR 5072). The Louisiana rules also IBR certain amendments to part 63 that were promulgated after July 1, 2008. These are 40 CFR part 63 withdrawal of and revision to subpart M (73 FR 39871), partial withdrawal of direct final rule and amendments to subpart EEEE (73 FR 40977), amendments to subpart BBBB (73 FR 42529), subpart XXXXXX (73 FR 43000), and subpart YYYYYY (73 FR 78637).

40 CFR part 61 delegations remain unchanged from the previous delegation update which was effective May 25, 2004. LDEQ’s request for delegation of certain NSPS and NESHAP is for all

sources (both part 70 and non-part 70 sources). The request includes revisions of the NESHAP standards adopted unchanged into Louisiana Administrative Code (LAC) Title 33:III, Chapter 30, Subchapter A, Section 3003—Incorporation by Reference 40 CFR part 60; Chapter 51, Subchapter B, Section 5116—Incorporation by Reference of 40 CFR part 61; Chapter 51, Subchapter C, Section 5122—Incorporation by Reference of 40 CFR part 63 as it Applies to Major Sources, except for the compliance date established in Subpart S—Pulp and Paper Industry at 40 CFR 63.440(d)(1); and Chapter 53, Subchapter B, Section 5311—Incorporation by Reference of 40 CFR part 63 as it Applies to Area Sources. For NSPS, this revision incorporated all NSPS promulgated by EPA (except Subpart AAA—Standards of Performance for New Residential Wood Heaters) as amended in the **Federal Register** through July 1, 2002. For the part 61 NESHAPs, this revision included all NESHAPs promulgated by EPA as amended in the **Federal Register** through July 1, 2002, excluding subparts B, H, I, K, Q, R, T, and W. For the part 63 NESHAPs, this includes the NESHAPs set forth in the table at end of this **Federal Register** action titled “CAA Program Delegation Status for Louisiana.” The effective date of the Federal delegation for parts 61 and 63 standards is the effective date of this rule.

Also the delegation of, subpart EEEE, Standards of Performance for Other Solid Waste Incineration Units (OSWI) that Commenced Construction on or before December 9, 2004, promulgated on December 16, 2005 (70 FR 74870), remains unchanged as does the LDEQ’s plan for emission guidelines and compliance times for OSWI units that commenced construction on or before December 9, 2004, subpart FFFF, 40 CFR 60.2980–60.3078 and tables 1–5, 70 FR 74870 (December 16, 2005). Until the LDEQ has a mechanism to approve training programs in compliance with 40 CFR 60.3014, the LDEQ shall except accreditation approved by other States complying with 40 CFR 60.3014. The IBR emission guidelines of 40 CFR part 60, and amendments to 40 CFR part 60, are applied to applicable units in the State.

#### V. What Is Not Being Delegated?

The following part 60, 61 and 63 authorities listed below are not delegated. All of the inquiries and requests concerning implementation and enforcement of the excluded standards in the State of Louisiana

should be directed to the EPA Region 6 Office.

- 40 CFR part 60, subpart AAA (Standards of Performance for New Residential Wood Heaters);
- 40 CFR part 60, subpart B, Adoption and Submittal of State Plans for Designated Facilities and 40 CFR part 60, subpart C, Emission Guidelines and Compliance Times, are not included;
- 40 CFR part 61, subpart B (National Emission Standards for Radon Emissions from Underground Uranium Mines);
- 40 CFR part 61, subpart H (National Emission Standards for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities);
- 40 CFR part 61, subpart I (National Emission Standards for Radionuclide Emissions from Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H);
- 40 CFR part 61, subpart K (National Emission Standards for Radionuclide Emissions from Elemental Phosphorus Plants);
- 40 CFR part 61, subpart Q (National Emission Standards for Radon Emissions from Department of Energy facilities);
- 40 CFR part 61, subpart R (National Emission Standards for Radon Emissions from Phosphogypsum Stacks);
- 40 CFR part 61, subpart T (National Emission Standards for Radon Emissions from the Disposal of Uranium Mill Tailings); and
- 40 CFR part 61, subpart W (National Emission Standards for Radon Emissions from Operating Mill Tailings).

In addition, EPA cannot delegate to a State any of the Category II Subpart A authorities set forth in 40 CFR 63.91(g)(2). These include the following provisions: § 63.6(g), Approval of Alternative Non-Opacity Standards; § 63.6(h)(9), Approval of Alternative Opacity Standards; § 63.7(e)(2)(ii) and (f), Approval of Major Alternatives to Test Methods; § 63.8(f), Approval of Major Alternatives to Monitoring; and § 63.10(f), Approval of Major Alternatives to Recordkeeping and Reporting. In addition, some MACT standards have certain provisions that cannot be delegated to the States (e.g. 40 CFR 63.106(b)). Therefore, any MACT standard that EPA is delegating to LDEQ, that provides that certain authorities cannot be delegated, are retained by EPA and not delegated. Furthermore, no authorities are delegated that require rulemaking in the **Federal Register** to implement, or where

Federal overview is the only way to ensure national consistency in the application of the standards or requirements of CAA section 112. Finally, section 112(r), the accidental release program authority, is not being delegated by this approval.

40 CFR 63, subpart D, Compliance Extensions for Early Reductions of Hazardous Air Pollutants (HAPs), Subpart E, Approval of State Programs and Delegation of Federal Authorities and Subpart J, National Emission Standards for HAPs for Polyvinyl Chloride and Copolymers Production, are not included.

In addition, this delegation to LDEQ to implement and enforce certain NSPS and NESHAPs does not extend to sources or activities located in Indian country, as defined in 18 U.S.C. 1151. Under this definition, EPA treats as reservations, trust lands validly set aside for the use of a Tribe even if the trust lands have not been formally designated as a reservation. Consistent with previous federal program approvals or delegations, EPA will continue to implement the NSPS and NESHAPs in Indian country because LDEQ has not adequately demonstrated its authority over sources and activities located within the exterior boundaries of Indian reservations and other areas in Indian country.

#### **VI. How Will Applicability Determinations Under Section 112 Be Made?**

In approving this delegation, LDEQ will obtain concurrence from EPA on any matter involving the interpretation of section 112 of the CAA or 40 CFR part 63 to the extent that implementation, administration or enforcement of these sections have not been covered by EPA determinations or guidance.

#### **VII. What Authority Does EPA Have?**

We retain the right, as provided by CAA section 112(l)(7), to enforce any applicable emission standard or requirement under section 112. EPA also has the authority to make certain decisions under the General Provisions (subpart A) of part 63. We are granting LDEQ some of these authorities, and retaining others, as explained in sections IV and V above. In addition, EPA may review and disapprove of State determinations and subsequently require revisions. (See 40 CFR 63.91 and 65 FR 55837, September 14, 2000, as amended at 70 FR 59887, October 13, 2005; 72 FR 27443, May 16, 2007.)

Furthermore, we retain any authority in an individual emission standard that

may not be delegated according to provisions of the standard.

#### **VIII. What Information Must LDEQ Provide to EPA?**

Under 40 CFR 60.4(b), all notifications under NSPS must be sent to both EPA and to LDEQ. Please send notifications and reports to Chief, Air Enforcement Surveillance Branch at the EPA Region 6 office.

In delegating the authority to implement and enforce these rules and in granting a waiver of EPA notification requirements, we require LDEQ to input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources. LDEQ must enter this information into the AIRS system and update the information by September 30 of every year. LDEQ must provide any additional compliance related information to the EPA Region 6 Office of Enforcement and Compliance Assurance within 45 days of a request under 40 CFR 63.96(a). In receiving delegation for specific General Provisions authorities, LDEQ must submit to EPA Region 6 on a semi-annual basis, copies of determinations issued under these authorities. For part 63 standards, these determinations include: applicability determinations (§ 63.1); approval/disapprovals of construction and reconstruction (§ 63.5(e) and (f)); notifications regarding the use of a continuous opacity monitoring system (§ 63.6(h)(7)(ii)); finding of compliance (§ 63.6(h)(8)); approval/disapprovals of compliance extensions (§ 63.6(i)); approvals/disapprovals of minor (§ 63.7(e)(2)(i)) or intermediate (§ 63.7(e)(2)(ii)) alternative (§ 63.7(f)) test methods; approval of shorter sampling times and volumes (§ 63.7(e)(2)(iii)); waiver of performance testing (§ 63.7(e)(2)(iv) and (h)(2), (3)); approvals/disapprovals of minor or intermediate alternative monitoring methods (§ 63.8(f)); approval of adjustments to time periods for submitting reports (§ 63.9 and 63.10); and approvals/disapprovals of minor alternatives to recordkeeping and reporting (§ 63.10(f)).

Additionally, EPA's Emissions, Monitoring, and Analysis Division must receive copies of any approved intermediate changes to test methods or monitoring. (Please note that intermediate changes to test methods must be demonstrated as equivalent through the procedures set out in EPA method 301.) This information on approved intermediate changes to test methods and monitoring will be used to compile a database of decisions that will

be accessible to State and local agencies and EPA Regions for reference in making future decisions. (For definitions of *major*, *intermediate* and *minor* alternative test methods or monitoring methods, see 40 CFR 63.90). The LDEQ should forward these intermediate test methods or monitoring changes via mail or facsimile to: Chief, Air Measurements and Quality Group, Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, Mail Code D205-02, Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541-0516.

#### **IX. What Is EPA's Oversight of This Delegation to LDEQ?**

EPA must oversee LDEQ's decisions to ensure the delegated authorities are being adequately implemented and enforced. We will integrate oversight of the delegated authorities into the existing mechanisms and resources for oversight currently in place. If, during oversight, we determine that LDEQ made decisions that decreased the stringency of the delegated standards, then LDEQ shall be required to take corrective actions and the source(s) affected by the decisions will be notified, as required by 40 CFR 63.91(g)(1)(ii). We will initiate withdrawal of the program or rule if the corrective actions taken are insufficient.

#### **X. Should Sources Submit Notices to EPA or LDEQ?**

For the NESHAPS being delegated, all of the information required pursuant to the general provisions and the relevant subpart of the Federal NESHAP (40 CFR part 63) should be submitted by sources located outside of Indian country, directly to the LDEQ at the following address: Louisiana Department of Environmental Quality, 602 N. Fifth Street, Baton Rouge, Louisiana 70802. The LDEQ is the primary point of contact with respect to delegated NESHAPS. Sources do not need to send a copy to EPA. EPA Region 6 waives the requirement that notifications and reports for delegated standards be submitted to EPA in addition to LDEQ in accordance with 40 CFR 63.9(a)(4)(ii) and 63.10(a)(4)(ii). For those standards that are not delegated, sources must continue to submit all appropriate information to EPA.

#### **XI. How Will Unchanged Authorities Be Delegated to LDEQ in the Future?**

In the future, LDEQ will only need to send a letter of request to EPA, Region 6, for NESHAP regulations that LDEQ has adopted by reference. The letter must reference the previous up-front

approval demonstration and reaffirm that it still meets the up-front approval criteria. We will respond in writing to the request stating that the request for delegation is either granted or denied. A **Federal Register** action will be published to inform the public and affected sources of the delegation, indicate where source notifications and reports should be sent, and to amend the relevant portions of the Code of Federal Regulations showing which NESHAP standards have been delegated to LDEQ.

## XII. Final Action

The public was provided the opportunity to comment on the proposed approval of the program and mechanism for delegation of section 112 standards, as they apply to part 70 sources, August 24, 1994, for the proposed interim approval of LDEQ's Title V operating permits program; and on April 7, 1995, for the proposed final approval of LDEQ's Title V operating permits program. In EPA's final full approval of Louisiana's Operating Permits Program (60 FR 47296), the EPA discussed the public comments on the proposed final delegation of the Title V operating permits program. In today's action, the public is given the opportunity to comment on the approval of LDEQ's request for delegation of authority to implement and enforce certain section 112 standards for all sources (both part 70 and non-part 70 sources) which have been adopted by reference Louisiana's state regulations. However, the Agency views the approval of these requests as a noncontroversial action and anticipates no adverse comments. Therefore, EPA is publishing this rule without prior proposal. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the program and delegation of authority described in this action if adverse comments are received. This action will be effective *June 14, 2010* without further notice unless the Agency receives relevant adverse comments by *May 14, 2010*.

If EPA receives relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if we receive relevant adverse comment on an

amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

## XIII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State request to receive delegation of certain Federal standards, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing delegation submissions, EPA's role is to approve submissions provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a delegation submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA to use VCS in place of a delegation submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 14, 2010*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

## List of Subjects

### 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

## 40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Benzene, Beryllium, Hazardous substances, Mercury, Radon, Reporting and recordkeeping requirements, Uranium, Vinyl chloride.

## 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 8, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ 40 CFR parts 60, 61, and 63 are amended as follows:

**PART 60—[AMENDED]**

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

**Subpart A—General Provisions**

■ 2. Section 60.4 is amended by revising paragraphs (b)(T) and (e)(2) to read as follows:

**§ 60.4 Address.**

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(T) State Louisiana: Louisiana Department of Environmental Quality, P.O. Box 4301, Baton Rouge, Louisiana 70821–4301. For a list of delegated

standards for Louisiana (excluding Indian country), see paragraph (e)(2) of this section.

\* \* \* \* \*

(e) \* \* \*

\* \* \* \* \*

(2) Louisiana. The Louisiana Department of Environmental Quality has been delegated all part 60 standards promulgated by EPA, except subpart AAA—Standards for Performance for New Residential Wood Heaters, as amended in the **Federal Register** through July 1, 2008.

## DELEGATION STATUS FOR PART 60 STANDARDS—STATE OF LOUISIANA

Subpart	Source category	LDEQ <sup>1</sup>
A .....	General Provisions .....	Yes.
D .....	Fossil Fueled Steam Generators (>250 MM BTU/hr). Including amendments issued January 28, 2009. (74 FR 5072).	Yes.
Da .....	Electric Utility Steam Generating Units (>250 MM BTU/hr). Including amendments issued January 28, 2009. (74 FR 5072).	Yes.
Db .....	Industrial-Commercial-Institutional Steam Generating Units (100 to 250 MM BTU/hr). Including amendments issued January 28, 2009. (74 FR 5072).	Yes.
Dc .....	Industrial-Commercial-Institutional Small Steam Generating Units (10 to 100 MM BTU/hr). Including amendments issued January 28, 2009. (74 FR 5072).	Yes.
E .....	Incinerators (>50 tons per day). Including amendments issued January 28, 2009. (74 FR 5072) .....	Yes.
Ea .....	Municipal Waste Combustors .....	Yes.
Eb .....	Large Municipal Waste Combustors .....	Yes.
Ec .....	Hospital/Medical/Infectious Waste Incinerators .....	Yes.
F .....	Portland Cement Plants .....	Yes.
G .....	Nitric Acid Plants .....	Yes.
H .....	Sulfuric Acid Plants .....	Yes.
I .....	Hot Mix Asphalt Facilities .....	Yes.
J .....	Petroleum Refineries .....	Yes.
Ja .....	Petroleum Refineries (After May 14, 2007). Including amendments issued July 28, 2008. (73 FR 43626) .....	Yes.
K .....	Storage Vessels for Petroleum Liquids (After 6/11/73 & Before 5/19/78) .....	Yes.
Ka .....	Storage Vessels for Petroleum Liquids (After 6/11/73 & Before 5/19/78) .....	Yes.
Kb .....	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Stg/Vessels) After 7/23/84 .....	Yes.
L .....	Secondary Lead Smelters .....	Yes.
M .....	Secondary Brass and Bronze Production Plants .....	Yes.
N .....	Primary Emissions from Basic Oxygen Process Furnaces (Construction Commenced After June 11, 1973) .....	Yes.
Na .....	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities Construction is Commenced After January 20, 1983.	Yes.
O .....	Sewage Treatment Plants .....	Yes.
P .....	Primary Copper Smelters .....	Yes.
Q .....	Primary Zinc Smelters .....	Yes.
R .....	Primary Lead Smelters .....	Yes.
S .....	Primary Aluminum Reduction Plants .....	Yes.
T .....	Phosphate Fertilizer Industry: Wet Process Phosphoric Plants .....	Yes.
U .....	Phosphate Fertilizer Industry: Superphosphoric Acid Plants .....	Yes.
V .....	Phosphate Fertilizer Industry: Diammonium Phosphate Plants .....	Yes.
W .....	Phosphate Fertilizer Industry: Triple Superphosphate Plants .....	Yes.
X .....	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities .....	Yes.
Y .....	Coal Preparation Plants .....	Yes.
Z .....	Ferroalloy Production Facilities .....	Yes.
AA .....	Steel Plants: Electric Arc Furnaces After 10/21/74 & On or Before 8/17/83 .....	Yes.
AAa .....	Steel Plants: Electric Arc Furnaces & Argon-Oxygen Decarburization Vessels After 8/07/83 .....	Yes.
BB .....	Kraft Pulp Mills .....	Yes.
CC .....	Glass Manufacturing Plants .....	Yes.
DD .....	Grain Elevators .....	Yes.
EE .....	Surface Coating of Metal Furniture .....	Yes.
GG .....	Stationary Gas Turbines .....	Yes.
HH .....	Lime Manufacturing Plants .....	Yes.
KK .....	Lead-Acid Battery Manufacturing Plants .....	Yes.
LL .....	Metallic Mineral Processing Plants .....	Yes.

## DELEGATION STATUS FOR PART 60 STANDARDS—STATE OF LOUISIANA—Continued

Subpart	Source category	LDEQ <sup>1</sup>
MM .....	Automobile & Light Duty Truck Surface Coating Operations .....	Yes.
NN .....	Phosphate Manufacturing Plants .....	Yes.
PP .....	Ammonium Sulfate Manufacture .....	Yes.
QQ .....	Graphic Arts Industry: Publication Rotogravure Printing .....	Yes.
RR .....	Pressure Sensitive Tape and Label Surface Coating Operations .....	Yes.
SS .....	Industrial Surface Coating: Large Appliances .....	Yes.
TT .....	Metal Coil Surface Coating .....	Yes.
UU .....	Asphalt Processing and Asphalt Roofing Manufacture .....	Yes.
VV .....	VOC Equipment Leaks in the SOCMi Industry .....	Yes.
VVa .....	VOC Equipment Leaks in the SOCMi Industry (After November 7, 2006) .....	Yes.
XX .....	Bulk Gasoline Terminals .....	Yes.
AAA .....	New Residential Wood Heaters .....	No
BBB .....	Rubber Tire Manufacturing Industry .....	Yes.
DDD .....	Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry .....	Yes.
FFF .....	Flexible Vinyl and Urethane Coating and Printing .....	Yes.
GGG .....	VOC Equipment Leaks in Petroleum Refineries .....	Yes.
HHH .....	Synthetic Fiber Production .....	Yes.
III .....	VOC Emissions from the SOCMi Air Oxidation Unit Processes .....	Yes.
JJJ .....	Petroleum Dry Cleaners .....	Yes.
KKK .....	VOC Equipment Leaks From Onshore Natural Gas Processing Plants .....	Yes.
LLL .....	Onshore Natural Gas Processing: SO <sub>2</sub> Emissions .....	Yes.
NNN .....	VOC Emissions from SOCMi Distillation Operations .....	Yes.
OOO .....	Nonmetallic Mineral Processing Plants .....	Yes.
PPP .....	Wool Fiberglass Insulation Manufacturing Plants .....	Yes.
QQQ .....	VOC Emissions From Petroleum Refinery Wastewater Systems .....	Yes.
RRR .....	VOC Emissions from SOCMi Reactor Processes .....	Yes.
SSS .....	Magnetic Tape Coating Operations .....	Yes.
TTT .....	Industrial Surface Coating: Plastic Parts for Business Machines .....	Yes.
UUU .....	Calciners and Dryers in Mineral Industries .....	Yes.
VVV .....	Polymeric Coating of Supporting Substrates Facilities .....	Yes.
WWW .....	Municipal Solid Waste Landfills .....	Yes.
AAAA .....	Small Municipal Waste Combustion Units (Construction is Commenced After 8/30/99 or Modification/Reconstruction is Commenced After 6/06/2001).	Yes.
CCCC .....	Commercial & Industrial Solid Waste Incineration Units (Construction is Commenced After 11/30/1999 or Modification/Reconstruction is Commenced on or After 6/01/2001).	Yes.
EEEE .....	Other Solid Waste Incineration Units (Constructed after 12/09/2004 or Modification/Reconstruction is commenced on or after 06/16/2004).	Yes.
IIII .....	Stationary Compression Ignition Internal Combustion Engines .....	Yes.
JJJJ .....	Stationary Spark Ignition Internal Combustion Engines. Including amendments issued October 8, 2008. (73 FR 59175).	Yes.
KKKK .....	Stationary Combustion Turbines (Construction Commenced After 02/18/2005) .....	Yes

<sup>1</sup> The Louisiana Department of Environmental Quality (LDEQ) has been delegated all Part 60 standards promulgated by EPA, except subpart AAA—Standards of Performance for New Residential Wood Heaters—as amended in the **Federal Register** through July 1, 2008.

**PART 61—[AMENDED]**

■ 3. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart A—General Provisions**

■ 4. Section 61.04 is amended by revising paragraph (b)(T) and by revising the text before the table in paragraph (c)(6)(ii) to read as follows:

**§ 61.04 Address.**

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

(T) State of Louisiana: Louisiana Department of Environmental Quality, P.O. Box 4301, Baton Rouge, Louisiana 70821-4301.

\* \* \* \* \*

(c) \* \* \*

\* \* \* \* \*

(6) \* \* \*  
\* \* \* \* \*

(ii) Louisiana. The Louisiana Department of Environmental Quality (LDEQ) has been delegated the following part 61 standards promulgated by EPA, as amended in the **Federal Register** through July 1, 2008. The (X) symbol is used to indicate each subpart that has been delegated.

\* \* \* \* \*

**PART 63—[AMENDED]**

■ 5. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart E—Approval of State Programs and Delegation of Federal Authorities**

■ 6. Section 63.99 is amended by revising paragraph (a)(18)(i) to read as follows:

**§ 63.99 Delegated Federal authorities.**

(a) \* \* \*

\* \* \* \* \*

(18) \* \* \*

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the Louisiana Department of Environmental Quality for all sources. The “X” symbol is used to indicate each subpart that has been delegated. The delegations are subject to all of the conditions and limitations set forth in Federal law, regulations, policy, guidance, and determinations. Some authorities cannot be delegated and are retained by EPA.

These include certain General provisions made to these rules after the date of  
Provisions authorities and specific parts adoption are not delegated.  
of some standards. Any amendments

## DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF LOUISIANA

Subpart	Source category	LDEQ <sup>1</sup>
A .....	General Provisions .....	X
D .....	Early Reductions .....	NO
F,G,H & I .....	SOCMI HON .....	X
J .....	Polyvinyl Chloride & Copolymers Production .....	NO <sup>2</sup>
L .....	Coke Oven Batteries .....	X
M .....	Perchloroethylene—Dry Cleaners .....	X
N .....	Chromium .....	X
O .....	Ethylene Oxide Sterilization .....	X
Q .....	Industrial Process Cooling Towers .....	X
R .....	Gasoline Distribution .....	X
S .....	Pulp & Paper MACT I .....	X
T .....	Halogenated Solvent .....	X
U .....	Polymers & Resins/Group I .....	X
W .....	Epoxy Resins and Non-Nylon Polyamides .....	X
X .....	Secondary Lead Smelting .....	X
Y .....	Marine Vessel Loading .....	X
AA/BB .....	Phosphoric Acid/Phosphate Fertilizers .....	X
CC .....	Petroleum Refineries (MACT I) .....	X
DD .....	Offsite Waste & Recovery .....	X
EE .....	Magnetic Tape Mfg .....	X
GG .....	Aerospace Mfg and Rework .....	X
HH .....	Oil & Natural Gas Production .....	X
II .....	Shipbuilding & Ship Repair .....	X
JJ .....	Wood Furniture Manufacturing .....	X
KK .....	Printing & Publishing .....	X
LL .....	Primary Aluminum Reduction Plants .....	X
MM .....	Combustion Sources at Kraft, Soda, and Sulfite Pulp & Paper Mills .....	X
OO .....	Storage Vessels (Tanks)—Control Level 1 .....	X
PP .....	Standards for Containers .....	X
QQ .....	Standards for Surface Impoundments .....	X
RR .....	Standards for Individual Drain Systems .....	X
SS .....	Closed Vent Systems, Control Devices, Recovery Devices & Routing to a Fuel Gas System or a Process .....	X
TT .....	Equipment Leaks—Control Level 1 .....	X
UU .....	Equipment Leaks—Control Level 2 .....	X
VV .....	Standards for Oil-Water Separators & Organic-Water Separators .....	X
WW .....	Storage Vessels (Tanks)—Control Level 2 .....	X
XX .....	Ethylene Manufacturing Process Units: Heat Exchange Systems & Waste Operations .....	X
YY .....	Acetal Resins .....	X
YY .....	Acrylic/Modacrylic Fibers .....	X
YY .....	Carbon Black Production .....	X
YY .....	Cyanide Chemicals Mfg .....	X
YY .....	Ethylene Production .....	X
YY .....	Hydrogen Fluoride .....	X
YY .....	Polycarbonates Production .....	X
YY .....	Spandex Production .....	X
CCC .....	Steel Pickling—HCL Process Facilities and Hydrochloric Acid Regeneration Plants .....	X
DDD .....	Standards for Mineral-Wool Production .....	X
EEE .....	Standards for Hazardous Waste Combustors .....	X
GGG .....	Standards for Pharmaceuticals Production .....	X
HHH .....	Standards for Natural Gas Transmission & Storage .....	X
III .....	Flexible Polyurethane Foam Production .....	X
JJJ .....	Polymers & Resins/Group IV .....	X
LLL .....	Portland Cement Manufacturing .....	X
MMM .....	Pesticide Active Ingredient Production .....	X
NNN .....	Wool Fiberglass .....	X
OOO .....	Polymers & Resins III Amino Resins, Phenolic Resins .....	X
PPP .....	Polyether Polyols Production .....	X
QQQ .....	Primary Copper Smelting .....	X
RRR .....	Secondary Aluminum Production .....	X
TTT .....	Primary Lead Smelting .....	X
UUU .....	Petroleum Refineries (Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Plants) .....	X
VVV .....	Publicly Owned Treatment Works (POTW) .....	X
XXX .....	Ferroalloys Production .....	X
ZZZ .....	Plywood/Particle Board Manufacturing .....	NO
AAAA .....	Municipal Solid Waste Landfills .....	X
CCCC .....	Nutritional Yeast Manufacturing .....	X
DDDD .....	Plywood & Composite Wood Products .....	NO
EEEE .....	Organic Liquids Distribution (Non-Gasoline) .....	X

## DELEGATION STATUS FOR PART 63 STANDARDS—STATE OF LOUISIANA—Continued

Subpart	Source category	LDEQ <sup>1</sup>
FFFF .....	Miscellaneous Organic .....	X
GGGG .....	Solvent Extraction for Vegetable Oil Production .....	X
HHHH .....	Wet-Formed Fiberglass Mat Production .....	X
IIII .....	Auto & Light Duty Truck (Surface Coating) .....	X
JJJJ .....	Paper & Other Webs (Surface Coating) .....	X
KKKK .....	Metal Can (Surface Coating) .....	X
MMMM .....	Misc. Metal Parts (Surface Coating) .....	X
NNNN .....	Large Appliances (Surface Coating) .....	X
OOOO .....	Fabric Printing, Coating & Dyeing (Surface Coating) .....	X
PPPP .....	Plastic Parts & Products (Surface Coating) .....	X
QQQQ .....	Wood Building Products (formerly Flat Wood Paneling) (Surface Coating) .....	X
RRRR .....	Metal Furniture (Surface Coating) .....	X
SSSS .....	Metal Coil (Surface Coating) .....	X
TTTT .....	Leather-Finishing Operations .....	X
UUUU .....	Cellulose Products .....	X
VVVV .....	Boat Manufacturing .....	X
WWWW .....	Reinforced Plastics Composites Production .....	X
XXXX .....	Rubber Tire Manufacturing .....	X
YYYY .....	Combustion Turbines .....	X
ZZZZ .....	Reciprocating Internal Combustion Engines (RICE) .....	X
AAAAA .....	Lime Manufacturing Plants .....	X
BBBBB .....	Semiconductor Manufacturing .....	X
CCCCC .....	Coke Oven; Pushing, Quenching, & Battery Stacks .....	X
DDDDD .....	Industrial, Commercial & Institutional Boilers & Process Heaters .....	NO <sup>2</sup>
EEEEE .....	Iron & Steel Foundries .....	X
FFFFF .....	Integrated Iron & Steel Manufacturing Facilities .....	X
GGGGG .....	Site Remediation .....	X
HHHHH .....	Miscellaneous Coating Manufacturing .....	X
IIIII .....	Mercury Cell Chlor-Alkali Plants .....	NO <sup>2</sup>
JJJJJ .....	Brick & Structural Clay Products Manufacturing .....	NO <sup>2</sup>
KKKKK .....	Clay Ceramics Manufacturing .....	NO <sup>2</sup>
LLLLL .....	Asphalt Roofing and Processing .....	X
MMMMM .....	Flexible Polyurethane Foam Fabrication Operation .....	X
NNNNN .....	Hydrochloric Acid Production .....	X
PPPPP .....	Engine Test Cells/Standards (Combined w/Rocket Testing Facilities) .....	X
QQQQQ .....	Friction Products Manufacturing .....	X
RRRRR .....	Taconite Ore Processing .....	X
SSSSS .....	Refractory Products Manufacturing .....	X
TTTTT .....	Primary Magnesium Refining .....	X
YYYYY .....	Electric Arc Furnace Steelmaking Facilities .....	X
BBBBBB .....	Gasoline Distribution Terminals .....	X
CCCCC .....	Gasoline Dispensing Facilities .....	X
DDDDD .....	Polyvinyl Chloride and Copolymers Production .....	X
EEEEEE .....	Primary Copper Smelting .....	X
FFFFFF .....	Secondary Copper Smelting .....	X
GGGGGG .....	Primary Nonferrous Metals Zinc, Cadmium, and Beryllium .....	X
HHHHHH .....	Paint Stripping and Miscellaneous Surface Coating .....	X
LLLLLL .....	Acrylic/Modacrylic Fiber .....	X
MMMMMM .....	Carbon Black Production .....	X
NNNNNN .....	Chromium Compounds .....	X
PPPPPP .....	Lead Acid Battery Mfg. .....	X
QQQQQQ .....	Wood Preserving .....	X
RRRRRR .....	Clay Ceramics Mfg. .....	X
SSSSSS .....	Glass Manufacturing .....	X
TTTTTT .....	Secondary Nonferrous Metals Processing (Brass, Bronze, Magnesium, & Zinc) .....	X
UUUUUU— VVVVVV.	(Reserved).	
WWWWWW	Plating and Polishing Operations .....	X
XXXXXX .....	Metal Fabrication & Finishing Source Nine Categories .....	X
YYYYYY .....	Ferroalloys Production Facilities .....	X
ZZZZZZ .....	(Reserved).	

<sup>1</sup> Federal Rules Adopted by Louisiana Department of Environmental Quality (LDEQ), unchanged as of June 16, 2006.<sup>2</sup> Although previously delegated to some States, this standard has been vacated and remanded to EPA by the U.S. Court of Appeals for District of Columbia Circuit. Therefore, this standard is not delegated at this time to any States in Region 6.



[FR Doc. 2010-8526 Filed 4-13-10; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2009-0479; FRL-8816-5]

#### Alkyl (C12-C16) Dimethyl Ammonio Acetate; Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of Alkyl (C<sub>12</sub>-C<sub>16</sub>) dimethyl ammonio acetate, herein referred to in this document as ADAA, when used as an inert ingredient (surfactant) in pesticide formulations for pre-harvest uses under 40 CFR 180.920 or applied to animals under 40 CFR 180.930 at a maximum concentration of 20% in pesticide product formulations. Technology Sciences Group, Inc., on behalf of Rhodia, Inc., submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of ADAA.

**DATES:** This regulation is effective April 14, 2010. Objections and requests for hearings must be received on or before June 14, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0479. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The

Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Elizabeth Fertich, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8560; e-mail address: [fertich.elizabeth@epa.gov](mailto:fertich.elizabeth@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR cite at <http://www.gpoaccess.gov/ecfr>. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to <http://www.epa.gov/oppts> and select "Test Methods and Guidelines."

###### C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests

for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2009-0479 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 14, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2009-0479, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

##### II. Background and Statutory Findings

In the **Federal Register** of August 19, 2009 (74 FR 41895) (FRL-8429-9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, announcing the filing of a pesticide petition (PP 9E7557) by Rhodia, Inc., 5171 Glenwood Avenue, Suite 402, Raleigh, NC 27612. The petition requested that 40 CFR 180.920 and 40 CFR 180.930 be amended by establishing an exemption from the requirement of a tolerance for residues of Alkyl (C<sub>12</sub>-C<sub>16</sub>) dimethyl ammonio acetate, herein referred to in this document as ADAA. That notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

### III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

### IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has

sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for exemption from the requirement of a tolerance for residues of ADAA when used as inert ingredients in pesticide formulations for pre-harvest uses and on animals at a maximum of 20% by weight in pesticide formulations. EPA's assessment of exposures and risks associated with establishing tolerances follows.

#### A. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by ADAA are discussed in this unit.

Acute oral toxicity studies were performed using C<sub>12</sub>-ADAA and C<sub>16</sub>-ADAA. ADAA has moderate to low acute toxicity via the oral and dermal routes of exposure. Low acute toxicity is generally associated with C<sub>16</sub>-ADAA while moderate acute toxicity is associated with C<sub>12</sub>-ADAA. In acute dermal and eye irritation studies, C<sub>12</sub>-ADAA was severely irritating to the skin and eyes. A mixture of C<sub>12</sub>-C<sub>16</sub> ADAA was used in a local lymph node assay (LLNA) to evaluate the potential to cause skin sensitization. C<sub>12</sub>-C<sub>16</sub> ADAA was found to be a sensitizer; however, it gave a negative response for skin sensitization in *in vivo* guinea pigs as determined by Magnusson-Kligman test.

Two developmental studies were available; an oral toxicity study in the rat and a screening level developmental dermal toxicity study in the rabbit. In the developmental toxicity study in the rat, maternal toxicity was manifested as reduced body weight gain, stained and matted haircoats, and respiratory rates at 50 milligrams/kilograms/day (mg/kg/day) and above. Offspring toxicity was manifested as reduced or absent ossification of the skull, sternebrae #5 and/or #6, and other sternebrae at 250 mg/kg/day. The NOAEL for developmental toxicity in rats was 150 mg/kg/day. In the screening level developmental dermal toxicity study in rabbits, maternal toxicity manifested as skin irritation, inhibition of body weight gain, decreased food consumption and resorptions at doses of 100 mg/kg/day and above while offspring toxicity was manifested as increased incidence of

resorptions and decreased average litter size at  $\geq 100$  mg/kg/day. The NOAEL for systemic and developmental toxicity in rabbits via dermal route was 40 mg/kg/day.

A dose range-finding and a main study of Combined Repeated Dose Toxicity Study with the Reproduction/Developmental Toxicity Screening Test according to the OPPTS Harmonized Test Guideline 870.3650 study were available in the rat. In the range-finding study, at  $\geq 100$  mg/kg/day, a reduction was observed in mean food consumption, body weight, and body weight gain during the pre-pairing period in all animals. Also, animals pushed their heads through the bedding throughout the treatment period at doses  $\geq 100$  mg/kg/day. At 1,000 mg/kg/day, mortality was observed in all animals within 24 hours. In the main OPPTS Harmonized Test Guideline 870.3650 study, parental toxicity was manifested as microscopic lesions (squamous hyperplasia, hyperkeratosis, submucosal inflammation and edema) in the forestomach at the lowest dose tested (50 mg/kg/day). Reproductive and developmental toxicity was manifested as increased implantation losses, decreased birth and viability indices, and decreased pup weight at 300 mg/kg/day (highest dose tested). The NOAEL for reproductive/developmental toxicity was 150 mg/kg/day.

Several mutagenicity studies (two Ames assays and chromosome aberration assay) were available for review. The results for these studies were negative. No animal carcinogenicity studies are available in the database. Based on Structure Activity Relationship (SAR) analysis, no structural alerts for carcinogenicity were identified.

Two *in vitro* dermal absorption studies were available in hairless mice. The dermal absorption factor of C<sub>12</sub>-ADAA and C<sub>16</sub>-ADAA was estimated to be  $<1\%$ .

The Agency notes the surfactants are surface-active materials that can damage the structural integrity of cellular membranes at high dose levels. Thus, surfactants are often corrosive and irritating in concentrated solutions. The observed toxicity seen in the repeated dose studies, such as microscopic stomach lesions or decreased body weight gain, are attributed to the corrosive and irritating nature of these surfactants.

There are no published or unpublished ADAA metabolism studies. However, ADAA are expected to be metabolized via three potential metabolic pathways:

1. Omega oxidation followed by beta oxidation of the carbon chain,
2. Conjugation of ADAA at the carboxylic acid portion of the molecule by any of a number of amino acids, or
3. Glucuronidation at the same site on ADAA, followed by elimination.

Specific information on the studies received and the nature of the adverse effects caused by ADAA, as well as, the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document "Decision Document for Alkyl (C<sub>12</sub>-C<sub>16</sub>) dimethyl ammonio acetate (CAS Reg. Nos. 683-10-3, 2601-33-4 and 693-33-4)," pages 8-16 in docket ID number EPA-HQ-OPP-2009-0479.

#### B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a Benchmark Dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the

extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the Level of Concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

For the purpose of this risk assessment, a protective overall NOAEL of 40 mg/kg/day was selected for all exposure scenarios based on weight-of-evidence from three studies in which systemic toxicity was observed at doses of 100 mg/kg/day or above. The different NOAELs observed in these studies are due to the dose selection

process. For example, a NOAEL of 33 mg/kg/day and LOAEL of 100 mg/kg/day (based on pushing head through bedding, decreased food consumption and weight gain) were established in a range finding study for a combined reproduction/developmental toxicity screening test. In the main study, Organization for Economic Cooperation and Development (OECD) combined repeated dose toxicity study with the reproduction/developmental toxicity screening test, the LOAEL was established at 50 mg/kg/day (lowest dose tested). However, the LOAEL was based on irritation in the forestomach of rats due to the physical/chemical properties of ADAA, which was not considered relevant for human risk assessments. Also the NOAEL of 40 mg/kg/day is considered to be protective of marginal decreases in body weights seen at the LOAEL of 50 mg/kg/day in the oral development toxicity study in rats because body weight effects were not observed in the OECD 422 study (main study) at a dose level of 150 mg/kg/day. Additionally, this NOAEL is supported by the developmental dermal toxicity study in the rabbit. In this study, a NOAEL of 40 was established based on the effects (uncoordinated movement, partial paralysis and increased incidence of resorptions) observed at 100 mg/kg/day in the presence of severe skin irritation.

A summary of the toxicological endpoints for ADAA used for human risk assessment is shown in the Table of this unit.

TABLE.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ADAA FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (all populations)	The Agency notes the surfactants are surface-active materials that can damage the structural integrity of cellular membranes at high dose levels. Moderate acute toxicity is associated with C12-ADAA. However, these effects are considered local irritations rather than systemic toxicity. Therefore this endpoint is not appropriate for risk assessment. In addition, no endpoint of concern attributed to a single dose was identified in the database.		
Chronic dietary (all populations)	NOAEL = 40 mg/kg/day UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Chronic RfD = 0.40 mg/kg/day cPAD = 0.40 mg/kg/day	Overall NOAEL based on three studies OECD 422 range finding and main study Developmental toxicity study in rabbits via dermal route, Oral developmental toxicity study in rats
Incidental Oral, dermal and inhalation (Short- and Intermediate-Term)	NOAEL= 40 mg/kg/day UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	LOC for MOE = 100	Overall NOAEL based on three studies OECD 422 range finding and main study Developmental toxicity study in rabbits via dermal route, Oral developmental toxicity study in rats

TABLE.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ADAA FOR USE IN HUMAN HEALTH RISK ASSESSMENT—Continued

Exposure/Scenario	Point of Departure and Uncertainty/Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Dermal short- and intermediate term (1 to 30 days) (1 to 6 months)	NOAEL= 40 mg/kg/day UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x 10% dermal absorption factor	LOC for MOE = 100	Overall NOAEL based on three studies OECD 422 range finding and main study Developmental toxicity study in rabbits via dermal route, Oral developmental toxicity study in rats
Inhalation short- and intermediate term (1 to 30 days) (1 to 6 months)	100% inhalation absorption	LOC for MOE = 100	Overall NOAEL based on three studies OECD 422 range finding and main study Developmental toxicity study in rabbits via dermal route, Oral developmental toxicity study in rats
Cancer (oral, dermal, inhalation)	Not necessary. No cancer concerns were identified.		

Point of Departure (POD) = A data point or an estimated point that is derived from observed dose-response data and used to mark the beginning of extrapolation to determine risk associated with lower environmentally relevant human exposures. NOAEL = no observed adverse effect level. LOAEL = lowest observed adverse effect level. UF = uncertainty factor. UF<sub>A</sub> = extrapolation from animal to human (interspecies). UF<sub>H</sub> = potential variation in sensitivity among members of the human population (intraspecies). PAD = population adjusted dose (a=acute, c=chronic). FQPA SF = FQPA Safety Factor. RfD = reference dose. MOE = margin of exposure. LOC = level of concern. N/A = not applicable.

## V. Aggregate Exposures

### A. Dietary Exposure

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to the ADAA, EPA considered exposure under the petitioned-for exemptions from the requirement of a tolerance. EPA assessed dietary exposures from ADAA in food as follows:

i. *Acute exposure.* The Agency notes the surfactants are surface-active materials that can damage the structural integrity of cellular membranes at high dose levels. Moderate acute toxicity is associated with C<sub>12</sub>-ADAA. However, these effects are considered local irritations rather than systemic toxicity. Therefore this endpoint is not appropriate for risk assessment. In addition, no endpoint of concern attributed to a single dose was identified in the database.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels in food, no residue data were submitted for ADAA. In the absence of specific residue data, EPA has developed an approach which uses surrogate information to derive upper bound exposure estimates for the subject inert ingredient. Upper bound

exposure estimates are based on the highest tolerance for a given commodity from a list of high-use insecticides, herbicides, and fungicides. A complete description of the general approach taken to assess inert ingredient risks in the absence of residue data is contained in the memorandum entitled “Alkyl Amines Polyalkoxylates (Cluster 4): Acute and Chronic Aggregate (Food and Drinking Water) Dietary Exposure and Risk Assessments for the Inerts.” (D361707, S. Piper, 2/25/09) and can be found at <http://www.regulations.gov> in docket ID number EPA–HQ–OPP–2008–0738.

In the dietary exposure assessment, the Agency assumed that the residue level of the inert ingredient would be no higher than the highest tolerance for a given commodity. Implicit in this assumption is that there would be similar rates of degradation (if any) between the active and inert ingredient and that the concentration of inert ingredient in the scenarios leading to these highest levels of tolerances would be no higher than the concentration of the active ingredient.

The Agency believes the assumptions used to estimate dietary exposures lead to an extremely conservative assessment of dietary risk due to a series of compounded conservatisms. First, assuming that the level of residue for an inert ingredient is equal to the level of residue for the active ingredient will overstate exposure. The concentrations of active ingredient in agricultural

products are generally at least 50 percent of the product and often can be much higher. Further, pesticide products rarely have a single inert ingredient; rather there is generally a combination of different inert ingredients used which additionally reduces the concentration of any single inert ingredient in the pesticide product in relation to that of the active ingredient. In the case of ADAA, EPA made a specific adjustment to the dietary exposure assessment to account for the use limitations of the amount of ADAA that may be in formulations (to no more than 20% by weight in pesticide products) and assumed that the ADAA are present at the maximum limitation rather than at equal quantities with the active ingredient. This remains a very conservative assumption because surfactants are generally used at levels far below this percentage.

Second, the conservatism of this methodology is compounded by EPA's decision to assume that, for each commodity, the active ingredient which will serve as a guide to the potential level of inert ingredient residues is the active ingredient with the highest tolerance level. This assumption overstates residue values because it would be highly unlikely, given the high number of inert ingredients, that a single inert ingredient or class of ingredients would be present at the level of the active ingredient in the highest tolerance for every commodity. Finally, a third compounding

conservatism is EPA's assumption that all foods contain the inert ingredient at the highest tolerance level. In other words, EPA assumed 100 percent of all foods are treated with the inert ingredient at the rate and manner necessary to produce the highest residue legally possible for an active ingredient. In summary, EPA chose a very conservative method for estimating what level of inert residue could be on food, then used this methodology to choose the highest possible residue that could be found on food and assumed that all food contained this residue. No consideration was given to potential degradation between harvest and consumption even though monitoring data shows that tolerance level residues are typically one to two orders of magnitude higher than actual residues in food when distributed in commerce.

Accordingly, although sufficient information to quantify actual residue levels in food is not available, the compounding of these conservative assumptions will lead to a significant exaggeration of actual exposures. EPA does not believe that this approach underestimates exposure in the absence of residue data.

iii. *Cancer.* ADAA is not expected to be carcinogenic since there was no evidence of carcinogenicity in the available studies. Since the Agency has not identified any concerns for carcinogenicity relating to ADAA, a cancer dietary exposure assessment was not conducted.

2. *Dietary exposure from drinking water.* For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for ADAA, a conservative drinking water concentration value of 100 ppb based on screening level modeling was used to assess the contribution to drinking water for chronic dietary risk assessments for ADAA. These values were directly entered into the dietary exposure model.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). ADAA may be used as inert ingredients in pesticide products that are registered for specific uses that may result in both indoor and outdoor residential exposures. A screening level residential exposure and risk assessment was completed for products containing ADAA as inert ingredients. The ADAA inerts are used in pesticide formulations that may be used around the home in

pesticide formulations used on lawn, turf, or gardens. In addition, these inerts may be present in personal care products. The Agency selected representative scenarios and conducted an assessment to represent worst-case residential exposure by assessing ADAA in pesticide formulations (outdoor scenarios) and ADAA in disinfectant-type uses (indoor scenarios). Based on information contained in the petition, ADAA can be present in personal care products (maximum concentration 5%). Therefore, the Agency assessed the personal care products containing ADAA using exposure scenarios used by OPP's Antimicrobials Division to represent worst-case residential handler exposure. The Agency conducted an assessment to represent worst-case residential exposure by assessing post application exposures and risks from ADAA in pesticide formulations (Outdoor Scenarios) and ADAA in disinfectant-type uses (Indoor Scenarios). Further details of this residential exposure and risk analysis can be found at <http://www.regulations.gov> in the memorandum entitled "JITF Inert Ingredients. Residential and Occupational Exposure Assessment Algorithms and Assumptions Appendix for the Human Health Risk Assessments to Support Proposed Exemption from the Requirement of a Tolerance When Used as Inert Ingredients in Pesticide Formulations" (D364751, 5/7/09, Lloyd/LaMay in docket ID number EPA-HQ-OPP-2008-0710).

## VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

Unlike other pesticide ingredients for which EPA has followed as cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to ADAA acetate and any other substances and, ADAA does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that ADAA has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements

released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative/>.

## VII. Additional Safety Factor for the Protection of Infants and Children

1. *In general.* Section 408(b)(2)(c) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) safety factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data is available to EPA support the choice of a different factor. EPA concluded that the FQPA safety factor should be reduced to 1X for ADAA.

2. *Prenatal and postnatal sensitivity.* There was no evidence of increased susceptibility of infants and children in the available developmental toxicity studies via dermal and oral routes of exposure. In these studies developmental toxicity was observed in the presence of maternal toxicity and/or at one dose level higher. There was no evidence of increased susceptibility of infants and children in the OPPTS 870.3650 study (OECD 422) study. In this study, the maternal toxicity was manifested as body weight changes and microscopic changes, while the fetal toxicity was manifested as increased implantation losses and decreased pup weight. The maternal and developmental NOAEL was 150 mg/kg/day.

3. *Conclusion.* EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The database is considered adequate for FQPA assessment. The following acceptable studies are available:

Developmental toxicity study in rats (1)

Developmental dermal toxicity study in rabbits

Combined development/reproduction repeated dose toxicity study (1)

ii. Fetal susceptibility was not observed in the oral developmental toxicity study in the rat, the

developmental dermal toxicity study in the rabbit or in the OPPTS Harmonized Test Guideline 870.3650 study. In these studies fetal toxicity was observed at doses that were higher than the dose that caused maternal toxicity. Therefore, there are low concerns and no residual uncertainties concerning prenatal and postnatal toxicity.

iii. Clinical signs of neurotoxicity (uncoordinated movement, partial paralysis) were observed in the developmental dermal study in the rabbit. However, no effects on Functional Observation Battery (FOB) parameters were observed at doses up to and including 300 mg/kg/day in the OPPTS 870.3650 study (OECD 422 study). Therefore, EPA concluded that the developmental neurotoxicity study is not required.

iv. No evidence of immunotoxicity was observed in the database.

v. No chronic toxicity or carcinogenicity studies are available in the database, however the Agency notes that surfactants are surface-active materials that can damage the structural integrity of cellular membranes at high dose levels. Thus, surfactants are often corrosive and irritating in concentrated solutions. The observed toxicity seen in the repeated dose studies, such as microscopic lesions or decreased body weight gain, are attributed to the corrosive and irritating nature of these surfactants. The Agency has considerable toxicity information on surfactants which indicates that the effects do not progressively increase in severity over time. In addition, use of the full 10X interspecies factor will actually provide an additional margin of safety because it is not expected that humans' response to local irritation/corrosiveness effects would be markedly different from animals. The database on ADAA indicates that the target organ toxicity is occurring at relatively high doses. Based on the consideration in this unit, the Agency concluded that an additional FQPA safety factor for the lack of a chronic study is not necessary.

vi. The dietary food exposure assessment utilizes highly conservative default assumptions and would not underestimate the dietary risk to all populations. For the purpose of the screening level dietary risk assessment to support this request for an exemption from the requirement of a tolerance for ADAA, a value of 100 ppb based on screening level modeling was used for the chronic dietary risk assessment. The value of 100 ppb is considered to be a high end, conservative assumption that is not likely to underestimate drinking water risks.

Taking into consideration the available information, EPA concludes the additional 10X FQPA safety factor can be reduced to 1X.

#### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* The Agency notes the surfactants are surface-active materials that can damage the structural integrity of cellular membranes at high dose levels. Moderate acute toxicity is associated with C<sub>12</sub>-ADAA. However, these effects are considered local irritations rather than systemic toxicity. Therefore this endpoint is not appropriate for risk assessment. In addition, no endpoint of concern attributed to a single dose was identified in the database.

2. *Chronic risk.* A chronic aggregate risk assessment takes into account exposure estimates from chronic dietary consumption of food and drinking water. Using the exposure assumptions discussed in this unit for chronic exposure and the use limitation of not more than 20% by weight in pesticide formulations, the chronic dietary exposure from food and water to ADAA is 19.5% of the cPAD for the U.S. population and 62.9% of the cPAD for children 1-2 years old, the most highly exposed population subgroup.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

ADAA are used as inert ingredients in pesticide products that are currently registered for uses that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to ADAA. Using the exposure assumptions described in this unit, EPA has

concluded that the combined short-term aggregated food, water, and residential exposures result in aggregate MOEs of 110 for adult males and adult females. Adult residential exposure combines high end dermal and inhalation handler exposure from indoor hard surface wiping with a high end post application dermal exposure from contact with treated lawns. EPA has concluded the combined short-term aggregated food, water, and residential exposures result in an aggregate MOE of 130 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, these MOEs are not of concern.

#### *4. Intermediate-term risk.*

Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

ADAA are currently registered for uses that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with intermediate-term residential exposures to ADAA. Using the exposure assumptions described in this unit, EPA has concluded that the combined intermediate-term aggregated food, water, and residential exposures result in aggregate MOEs of 450 for adult males and adult females. Adult residential exposure includes high end post application dermal exposure from contact with treated lawns. EPA has concluded the combined intermediate-term aggregated food, water, and residential exposures result in an aggregate MOE of 150 for children. Children's residential exposure includes total exposures associated with contact with treated lawns (dermal and hand-to-mouth exposures). As the level of concern is for MOEs that are lower than 100, this MOE is not of concern.

5. *Aggregate cancer risk for U.S. population.* The Agency has not identified any concerns for carcinogenicity relating to ADAA.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to residues of ADAA when used as inert ingredients in pesticide formulations for pre-harvest uses and on animals at a maximum of 20% by weight in pesticide formulations.

## VIII. Other Considerations

### A. Endocrine Disruptors

EPA is required under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) “may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or other such endocrine effects as the Administrator may designate.” Following recommendations of its Endocrine Disruptor and Testing Advisory Committee (EDSTAC), EPA determined that there was a scientific basis for including, as part of the program, the androgen and thyroid hormone systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC’s recommendation that the Program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP).

When additional appropriate screening and/or testing protocols being considered under the Agency’s EDSP have been developed, ADAA may be subjected to further screening and/or testing to better characterize effects related to endocrine disruption.

### B. Analytical Method

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

### C. International Tolerances

The Agency is not aware of any country requiring a tolerance for ADAA nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

## IX. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of ADAA. Accordingly, EPA finds that exempting ADAA (at a maximum of

20% by weight in formulation) from the requirement of a tolerance will be safe.

## X. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175,

entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

## XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a “major rule” as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In §180.920, in the table add alphabetically the following inert ingredient to read as follows:

**§ 180.920 Inert ingredients used pre-harvest; exemptions from the requirement of a tolerance.**

\* \* \* \* \*

Inert ingredients	Limits	Uses
Alkyl (C <sub>12</sub> -C <sub>16</sub> ) dimethyl ammonio acetate (CAS Reg. Nos. 683-10-3, 2601-33-4 and 693-33-4)	20% by weight in pesticide formulation	Surfactant

■ 3. In § 180.930, in the table add alphabetically the following inert ingredient to read as follows:

**§ 180.930 Inert ingredients applied to animals; exemptions from the requirement of a tolerance.**

\* \* \* \* \*

Inert ingredients	Limits	Uses
Alkyl (C <sub>12</sub> -C <sub>16</sub> ) dimethyl ammonio acetate (CAS Reg. Nos. 683-10-3, 2601-33-4 and 693-33-4)	20% by weight in pesticide formulation	Surfactant

[FR Doc. 2010-8298 Filed 4-13-10; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[EPA-HQ-OPP-2008-0695; FRL-8808-7]

### Kasugamycin; Pesticide Tolerances for Emergency Exemptions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a time-limited tolerance for residues of kasugamycin, 3-O-[2-amino-4-[(carboxyiminomethyl)amino]-2,3,4,6-tetradeoxy- $\alpha$ -D-arabino-hexopyranosyl]-D-chiro-inositol in or on apples. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the agricultural bactericide on apples. This regulation establishes a maximum permissible level for residues of kasugamycin in this food commodity. The time-limited tolerance expires and is revoked on December 31, 2012.

**DATES:** This regulation is effective April 14, 2010. Objections and requests for hearings must be received on or before June 14, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2008-0695. All documents in the docket are listed in the docket index available in <http://www.regulations.gov>.

Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-9367; e-mail address: [ertman.andrew@epa.gov](mailto:ertman.andrew@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### B. How Can I Get Electronic Access to Other Related Information?

You may access a frequently updated electronic version of 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to <http://www.epa.gov/oppts> and select "Test Methods and Guidelines."

##### C. Can I File an Objection or Hearing Request?

Under section 408(g) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2008-0695 in the subject line on the first page of your submission. All



requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before June 14, 2010.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA-HQ-OPP-2008-0695, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

## II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of FFDCA, 21 U.S.C. 346a(e) and 346a(1)(6), is establishing a time-limited tolerance for residues of the agricultural bactericide kasugamycin, 3-O-[2-amino-4-[(carboxyiminomethyl)amino]-2,3,4,6-tetradeoxy- $\alpha$ -D-arabino-hexopyranosyl]-D-chiro-inositol in or on apples at 0.05 parts per million (ppm). This time-limited tolerance expires and is revoked on December 31, 2012. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the CFR.

Section 408(l)(6) of FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on FIFRA section 18 related time-limited tolerances to set binding precedents for the application of section

408 of FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

## III. Emergency Exemption for Kasugamycin on Apples and FFDCA Tolerances

The State of Michigan requested the use of kasugamycin on apples to control severe infestations of the bacteria responsible for the disease fire blight. After having reviewed the submission, EPA determined that emergency conditions exist for this State, and that the criteria for an emergency exemption are met. EPA has authorized under FIFRA section 18 the use of kasugamycin on apples for control of fire blight in Michigan.

As part of its evaluation of the emergency exemption application, EPA assessed the potential risks presented by residues of kasugamycin in or on apples. In doing so, EPA considered the safety standard in section 408(b)(2) of FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency

exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of FFDCA. Although these time-limited tolerances expire and are revoked on December 31, 2012, under section 408(l)(5) of FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on apples after that date will not be unlawful, provided the pesticide was applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these time-limited tolerances at the time of that application. EPA will take action to revoke these time-limited tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether kasugamycin meets FIFRA's registration requirements for use on apples or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that this time-limited tolerance decision serves as a basis for registration of kasugamycin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for persons in any State other than Michigan to use this pesticide on these crops under FIFRA section 18 absent the issuance of an emergency exemption applicable within that State. For additional information regarding the emergency exemption for kasugamycin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

## IV. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to

give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Consistent with the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure expected as a result of this emergency exemption request and the time-limited tolerances for residues of kasugamycin, 3-O-[2-amino-4-[[carboxyiminomethyl]amino]-2,3,4,6-tetradeoxy- $\alpha$ -D-arabino-hexopyranosyl]-D-chiro-inositol on apples at 0.05 ppm. EPA's assessment of exposures and risks associated with establishing time-limited tolerances follows.

#### A. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, a toxicological point of departure (POD) is identified as the basis for derivation of reference values for risk assessment. The POD may be defined as the highest dose at which no adverse effects are observed (the NOAEL) in the toxicology study identified as appropriate for use in risk assessment. However, if a NOAEL cannot be determined, the lowest dose at which adverse effects of concern are identified (the LOAEL) or a benchmark dose (BMD) approach is sometimes used for risk assessment. Uncertainty/safety factors (UFs) are used in conjunction with the POD to take into account uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. Safety is assessed for acute and chronic dietary risks by comparing aggregate food and water exposure to the pesticide to the acute population adjusted dose (aPAD) and chronic population adjusted dose (cPAD). The aPAD and cPAD are calculated by dividing the POD by all applicable UFs. Aggregate short-, intermediate-, and chronic-term risks are evaluated by comparing food, water, and residential exposure to the POD to ensure that the margin of exposure (MOE) called for by the product of all applicable UFs is not exceeded. This latter value is referred to as the level of concern (LOC).

For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus,

the Agency estimates risk in terms of the probability of an occurrence of the adverse effect greater than that expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for kasugamycin used for human risk assessment can be found at <http://www.regulations.gov> in document "Kasugamycin. Human Health Risk Assessment for the Proposed Food/Feed Use of the Fungicide (Associated with Section 18 Registration) on Apples in Michigan," page 8 in docket ID number EPA-HQ-OPP-2008-0695. On page 9 of that assessment there is also a qualitative evaluation of the risks for development of resistant pathogenic bacteria, in consideration of factors recommended by public health experts to sustain the effectiveness of antibiotic materials. Field use of this chemical under the section 18 involved measures and requirements to limit, manage, and monitor for resistant bacteria. The terms of use are included in this docket.

#### B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to kasugamycin, EPA considered exposure under the time-limited tolerances established by this action as well as all existing kasugamycin tolerances in (40 CFR 180.614). EPA assessed dietary exposures from kasugamycin in food as follows:

i. *Acute exposure.* No such effects were identified in the toxicological studies for kasugamycin; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and default processing factors were used. The chronic dietary assessment is highly conservative, and therefore provides an upper-bound estimate of dietary exposure and risk.

iii. *Cancer.* Kasugamycin has been classified by the Agency as not likely to be carcinogenic to humans and therefore, a cancer exposure assessment was not conducted.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for kasugamycin. Tolerance level

residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for kasugamycin in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of kasugamycin. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of kasugamycin for chronic exposures for non-cancer assessments are estimated to be 0.0214 ppb for surface water and 0.278 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 0.278 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Kasugamycin is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA has not found kasugamycin to share a common mechanism of toxicity with any other substances, and kasugamycin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that kasugamycin does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common

mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at <http://www.epa.gov/pesticides/cumulative>.

### C. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA SF. In applying this provision, EPA either retains the default value of 10X, or uses a different additional SF when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* No increased quantitative or qualitative susceptibility was observed in the developmental rat or rabbit studies or in the 2-generation reproduction study. No offspring toxicity was observed at any of the doses tested in these three studies. Reproductive toxicity was noted in the F1 generation of the 2-generation reproduction study. However, because parental toxicity (decreased body weights and body weight gains) occurred at a lower dose than that which resulted in effects on reproduction, there is no increased quantitative or qualitative susceptibility of the offspring.

3. *Conclusion.* There was no evidence of neurotoxicity in any of the studies available in the toxicology database, including the subchronic feeding studies, the chronic feeding studies, the developmental toxicity studies, and the 2-generation reproduction study. Therefore, acute and subchronic neurotoxicity studies are not required. A developmental neurotoxicity study is not required because:

EPA has determined that reliable data show that the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for kasugamycin is considered adequate to characterize potential toxic effects on infants and children.

ii. There is no indication that kasugamycin is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is no evidence that kasugamycin results in increased susceptibility in *in utero* rats or rabbits in the prenatal developmental studies or in young rats in the 2-generation reproduction study.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to kasugamycin in drinking water. These assessments will not underestimate the exposure and risks posed by kasugamycin.

### D. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. The aPAD and cPAD represent the highest safe exposures, taking into account all appropriate SFs. EPA calculates the aPAD and cPAD by dividing the POD by all applicable UFs. For linear cancer risks, EPA calculates the probability of additional cancer cases given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the POD to ensure that the MOE called for by the product of all applicable UFs is not exceeded.

1. *Acute risk.* An acute aggregate risk assessment takes into account exposure estimates from acute dietary consumption of food and drinking water. No adverse effect resulting from a single-oral exposure was identified, therefore, no acute dietary endpoint was selected. Therefore, kasugamycin is not expected to pose an acute risk.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to kasugamycin from food and water will utilize 20% of the cPAD for all infants less than 1 year old, the population group receiving the greatest exposure. There are no residential uses for kasugamycin.

3. *Short- and intermediate term risk.* Short- and intermediate-term aggregate exposure take into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Kasugamycin is not registered for any use patterns that would result in residential exposure. Therefore, the short- and intermediate-term aggregate risk is the sum of the risk from exposure

to kasugamycin through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population.* Kasugamycin is classified as a not likely to be carcinogenic to humans, and therefore, EPA does not expect kasugamycin to pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to kasugamycin residues.

## V. Other Considerations

### A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

### B. International Residue Limits

There are no established Canadian, Mexican, or Codex Maximum Residue Limits (MRLs) for kasugamycin residues in apple commodities.

## VI. Conclusion

Therefore, a time-limited tolerance is established for residues of kasugamycin, 3-O-[2-amino-4-[(carboxyiminomethyl)amino]-2,3,4,6-tetradeoxy- $\alpha$ -D-arabino-hexopyranosyl]-D-chiro-inositol in or on apples at 0.05 ppm. This tolerance expires and is revoked on December 31, 2012.

## VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under sections 408(e) and 408(l)(6) of FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et*

seq., nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established in accordance with sections 408(e) and 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

### VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not

a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

■ Therefore, 40 CFR chapter I is amended as follows:

### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.614 is amended by revising paragraph (b) to read as follows:

#### § 180.614 Kasugamycin; tolerances for residues.

\* \* \* \* \*

(b) *Section 18 emergency exemptions.* Time-limited tolerances specified in the following table are established for residues of kasugamycin, 3-O-[2-amino-4-[(carboxyiminomethyl)amino]-2,3,4,6-tetradeoxy- $\alpha$ -D-arabino-hexopyranosyl]-D-chiro-inositol in or on the specified agricultural commodities, resulting from use of the pesticide pursuant to FIFRA section 18 emergency exemptions. The tolerances expire and are revoked on the date specified in the table.

Commodity	Parts per million	Expiration/revocation date
Apple	0.05	12/31/12

\* \* \* \* \*

[FR Doc. 2010-8133 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-S**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 180

[EPA-HQ-OPP-2009-0134; FRL-8818-9]

#### Thifensulfuron methyl; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of thifensulfuron methyl in or on safflower, seed. Interregional Research Project Number 4

(IR-4) requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA).

**DATES:** This regulation is effective April 14, 2010. Objections and requests for hearings must be received on or before June 14, 2010, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2009-0134. All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### FOR FURTHER INFORMATION CONTACT:

Barbara Madden, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-6463; e-mail address: [madden.barbara@epa.gov](mailto:madden.barbara@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

##### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to those engaged in the following activities:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be

affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

#### *B. How Can I Get Electronic Access to Other Related Information?*

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at <http://www.gpoaccess.gov/ecfr>. To access the OPPTS harmonized test guidelines referenced in this document electronically, please go to <http://www.epa.gov/oppts> and select "Test Methods and Guidelines."

#### *C. Can I File an Objection or Hearing Request?*

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA-HQ-OPP-2009-0134 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before June 14, 2010. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA-HQ-OPP-2009-0134, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

## **II. Petition for Tolerance**

In the **Federal Register** of April 8, 2009 (74 FR 15971) (FRL- 8407-4), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 9F7523) by IR-4, 500 College Rd. East, Suite 201 W, Princeton, NJ 08540. The petition requested that 40 CFR 180.439 be amended by establishing a tolerance for residues of the herbicide thifensulfuron methyl, (methyl-3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino] carbonyl] amino] sulfonyl]-2-thiophenecarboxylate), in or on safflower, seed at 0.05 parts per million (ppm). That notice referenced a summary of the petition prepared on behalf of IR-4 by E.I. DuPont de Nemours, the registrant, which is available to the public in the docket, <http://www.regulations.gov>. There were no comments received in response to the notice of filing.

## **III. Aggregate Risk Assessment and Determination of Safety**

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in

section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerance for residues of thifensulfuron methyl on safflower seed at 0.05ppm. EPA's assessment of exposures and risks associated with thifensulfuron methyl follows.

### *A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Thifensulfuron methyl has mild to low acute toxicity when administered via the oral, inhalation and dermal routes of exposure. It has moderate to low toxicity with respect to eye and skin irritation and is not a dermal sensitizer. Most findings in the submitted studies related to decreases in body weights, body weight gains, or organ weights (a reflection of the lower body weights compared with control weights). There were increased liver weights in male dogs and increased thyroid/parathyroid weights in female dogs. There were no gross or histopathological changes reported in any of the studies.

In the rat developmental study, there were no maternal effects at the highest dose tested (HDT). The rabbit developmental study showed a decrease in maternal body weights at the HDT. There were no developmental effects at the HDT. In the 2-generation rat reproduction study there were no parental, reproductive or offspring effects. There was an increase in quantitative susceptibility in the rat developmental study, based on decreased mean fetal body weights, and an increase in the incidence of small renal papillae (only at the highest dose level).

Thifensulfuron methyl is classified as "not likely to be carcinogenic to humans," based on acceptable chronic/carcinogenicity studies in rats and mice at doses that are considered to be adequate, and not excessive for the determination of carcinogenic potential. The available mutagenicity studies *in vivo* and *in vitro* show that thifensulfuron methyl is neither mutagenic nor clastogenic.

Neurotoxicity was not observed in the submitted guideline studies. There were

no acute or subchronic neurotoxicity studies available for review. There were also no immunotoxicity studies submitted for review. Immunotoxicity was observed as a decrease in spleen weight in the subchronic rat study. However, this effect was only noted in males, and only at the mid-level dose of 177 mg/kg. The lack of response at the high-level dose, the occurrence in a single sex, the availability of a clear NOAEL, and the absence of immunotoxic effects in the remainder of the database reduce EPA's concern for immunotoxicity.

Specific information on the studies received and the nature of the adverse effects caused by thifensulfuron methyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at <http://www.regulations.gov> in document "Thifensulfuron Methyl.

Human Health Risk Assessment for the Proposed Food/Feed Use of the Herbicide (Associated with Regional Section 3 Registration) on Safflower," pp. 9-10 in docket ID number EPA-HQ-OPP-2009-0134.

#### *B. Toxicological Points of Departure/ Levels of Concern*

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest

dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level – generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD) – and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see <http://www.epa.gov/pesticides/factsheets/riskassess.htm>.

A summary of the toxicological endpoints for thifensulfuron methyl used for human risk assessment is shown in the table of this unit.

TABLE —SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR THIFENSULFURON METHYL FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Point of Departure and Uncertainty/ Safety Factors	RfD, PAD, LOC for Risk Assessment	Study and Toxicological Effects
Acute dietary (Females 13 - 50 years of age)	NOAEL = 159 milligrams/kilograms/day (mg/kg/day) UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF = 1x	Acute RfD = 1.59 mg/kg/day aPAD = 1.59 mg/kg/day	Developmental Oral Toxicity-Rat. LOAEL = 725 mg/kg/day based on decreased mean body weight and increased incidence of small renal papillae
Acute dietary (General population including infants and children)	Not applicable.		There were no single dose effects appropriate for acute exposure assessment for the general population.
Chronic dietary (All populations)	NOAEL= 4.3 mg/kg/day UF <sub>A</sub> = 10x UF <sub>H</sub> = 10x FQPA SF 1x	Chronic RfD = 0.043 mg/kg/day cPAD = 0.043mg/kg/day	Carcinogenicity oral toxicity in mice. LOAEL = 128 mg/kg/day based on decreased body weight and body weight gain.
Cancer (Oral)	Not likely to be a human carcinogen, based on the lack of evidence of carcinogenicity in rats and mice.		

UF<sub>A</sub> = extrapolation from animal to human (interspecies). UF<sub>H</sub> = potential variation in sensitivity among members of the human population (intraspecies). UF<sub>L</sub> = use of a LOAEL to extrapolate a NOAEL. UF<sub>S</sub> = use of a short-term study for long-term risk assessment. UF<sub>DB</sub> = to account for the absence of data or other data deficiency. FQPA SF = Food Quality Protection Act Safety Factor. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. MOE = margin of exposure. LOC = level of concern.

#### *C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to thifensulfuron methyl, EPA considered exposure under the petitioned-for tolerance as well as all existing thifensulfuron methyl tolerances in 40 CFR 180.439. EPA assessed dietary exposures from thifensulfuron methyl in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern

occurring as a result of a 1-day or single exposure. No such effect was identified for thifensulfuron methyl for the general population. However, EPA identified potential acute effects (decreased mean body weight, and increased incidence of small renal papillae) from pre-natal exposure and thus is assessing exposure and risk for the population subgroup, females 13 – 49 years old.

In estimating acute dietary exposure, EPA used food consumption information from the United States Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII). As to residue levels

in food, EPA used tolerance-level residues, DEEM default processing factors for all processed commodities and assumed 100 percent crop treated (PCT) for all commodities covered by existing or proposed tolerances.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance-level residues, DEEM default processing factors for all processed commodities and assumed 100 PCT for all commodities covered by existing or proposed tolerances.

iii. *Cancer*. Based on the data summarized in Unit III.A., EPA has classified thifensulfuron methyl as “not likely to be carcinogenic to humans”. Therefore, a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue or PCT information in the dietary assessment for thifensulfuron methyl. Tolerance level residues and 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water*. The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for thifensulfuron methyl in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of thifensulfuron methyl. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at <http://www.epa.gov/oppefed1/models/water/index.htm>.

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI-GROW) models, the estimated drinking water concentrations (EDWCs) of thifensulfuron methyl for acute exposures are estimated to be 4.429 parts per billion (ppb) for surface water and 0.0972 ppb for ground water and for chronic exposures for non-cancer assessments are estimated to be 1.5 ppb for surface water and .0972 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 4.429 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 1.5 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure*. The term “residential exposure” is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Thifensulfuron methyl is not registered for any specific use patterns that would result in residential exposure.

4. *Cumulative effects from substances with a common mechanism of toxicity*. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider “available information” concerning the cumulative effects of a particular

pesticide’s residues and “other substances that have a common mechanism of toxicity.”

EPA has not found thifensulfuron methyl to share a common mechanism of toxicity with any other substances, and thifensulfuron methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that thifensulfuron methyl does not have a common mechanism of toxicity with other substances. For information regarding EPA’s efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA’s website at <http://www.epa.gov/pesticides/cumulative>.

#### *D. Safety Factor for Infants and Children*

1. *In general*. Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity*. The prenatal and postnatal toxicology database for thifensulfuron methyl includes rat and rabbit prenatal developmental toxicity studies and a 2-generation reproduction toxicity study in rats. There was evidence of increased quantitative susceptibility in the rat developmental toxicity study. At the HDT, decreased mean fetal weights, and an increase in incidence of small renal papillae were observed in the absence of maternal toxicity. There was no indication of pre- or post-natal susceptibility in the rabbit developmental or rat reproduction studies.

3. *Conclusion*. EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicity database for thifensulfuron methyl is complete except for immunotoxicity, acute neurotoxicity and subchronic neurotoxicity testing. Recent changes to

40 CFR part 158 make acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200) and immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration; however, the existing data are sufficient for endpoint selection for exposure/risk assessment scenarios, and for evaluation of the requirements under the FQPA.

Neurotoxicity was not observed in any of the studies up to the HDT, nor is there any expectation of neurotoxicity based on the mechanism of action. Furthermore, the toxicity database for thifensulfuron methyl does not indicate that the immune system is the primary target organ. Immunotoxicity was observed as a decrease in spleen weight in the subchronic rat study. However, this effect was only noted in males, and only at the mid-level dose of 177 mg/kg. The lack of response in the high-level dose, the occurrence in a single sex, the availability of a clear NOAEL, and the absence of immunotoxic effects in the remainder of the database reduces EPA’s concern for immunotoxicity. The overall weight of evidence suggests that thifensulfuron methyl does not directly target the immune system, and this finding (decrease in spleen weight) may be due to secondary effects of a primary toxicity. Therefore, the Agency does not believe that conducting the acute and subchronic neurotoxicity, and the immunotoxicity studies will result in a lower point of departure than the currently selected endpoints for overall risk assessment, and therefore, a database uncertainty factor is not needed to account for the lack of these studies.

ii. There is no indication that thifensulfuron methyl is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional UFs to account for neurotoxicity.

iii. There is evidence that thifensulfuron methyl results in increased susceptibility in *in utero* rats in the prenatal developmental studies and in young rats in the 2-generation reproduction study; therefore, a degree of concern analysis was performed to determine the level of concern for the effects observed when considered in the context of all available toxicity data and to identify any residual concerns after establishing toxicity endpoints and traditional UF’s to be used in the thifensulfuron methyl risk assessment. In considering the overall toxicity profile and the endpoints and doses selected for the thifensulfuron methyl risk assessment, EPA characterized the degree of concern for the susceptibility observed in the rat developmental and



2-generation reproductive studies as low and determined that there are no residual uncertainties for prenatal and/or postnatal toxicity because:

a. The only missing toxicity data for thifensulfuron methyl are the newly required neurotoxicity and immunotoxicity studies; however, no additional UF is needed in the absence of these studies because there is no evidence to indicate that thifensulfuron methyl targets the nervous system or the immune system. Further, EPA has concluded a developmental neurotoxicity study is not required.

b. There are clear NOAELs and LOAELs for the developmental and offspring effects noted in the rat developmental toxicity and in the 2-generation reproduction toxicity studies and the doses and endpoints have been selected from these studies for risk assessment for the relevant exposed populations, i.e., pregnant females and children.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on conservative assumptions, including 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to thifensulfuron methyl in drinking water. These assessments will not underestimate the exposure and risks posed by thifensulfuron methyl.

#### *E. Aggregate Risks and Determination of Safety*

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to thifensulfuron methyl will occupy less than 1% of the aPAD for females (ages 13 – 49), the population subgroup receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to thifensulfuron methyl from food and water will utilize 1% of the cPAD for children (ages 3 –

5), the population subgroup receiving the greatest exposure. There are no residential uses for thifensulfuron methyl.

3. *Short and intermediate-term risk.* Short and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

A short and intermediate-term adverse effect was identified; however, thifensulfuron methyl is not registered for any use patterns that would result in short or intermediate-term residential exposure. Short and intermediate-term risk is assessed based on short and intermediate-term residential exposure plus chronic dietary exposure. Because there is no short or intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately protective cPAD (which is at least as protective as the point of departure used to assess short and intermediate-term risk), no further assessment of short or intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating short and intermediate-term risk for thifensulfuron methyl.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, thifensulfuron methyl is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to thifensulfuron methyl residues.

#### **IV. Other Considerations**

##### *A. Analytical Enforcement Methodology*

The following adequate enforcement methodology is available to enforce the tolerance expression: Two High Pressure Liquid Chromatography (HPLC) photo-conductivity detection methods. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: [residuemethods@epa.gov](mailto:residuemethods@epa.gov).

##### *B. International Residue Limits*

There are no CODEX, Canadian or Mexican maximum residue limits (MRLs) established for residues of thifensulfuron methyl on safflower.

#### *C. Revisions to Petitioned-For Tolerances*

EPA revised the tolerance expression in paragraph (a) to clarify:

1. That, as provided in FFDCA section 408(a)(3), the tolerance covers metabolites and degradates of thifensulfuron methyl not specifically mentioned; and

2. That compliance with the specified tolerance levels is to be determined by measuring only the specific compounds mentioned in the tolerance expression.

#### **V. Conclusion**

Therefore, a tolerance is established for residues of thifensulfuron methyl (methyl-3-[[[4-methoxy-6-methyl-1,3,5-triazin-2-yl) amino] carbonyl] amino] sulfonyl]-2-thiophenecarboxylate), in or on safflower, seed at 0.05 ppm.

#### **VI. Statutory and Executive Order Reviews**

This final rule establishes tolerances under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by



Congress in the preemption provisions of section 408(n)(4) of FFDCFA. As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104-4).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note).

## VII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 2010.

**Lois Rossi,**

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

### PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.439, revise paragraph (a) introductory text and paragraph (c) to read as follows:

#### § 180.439 Thifensulfuron methyl; tolerances for residues.

(a) *General.* Tolerances are established for residues of thifensulfuron methyl, including its metabolites and degradates, in or on the commodities listed in the following table [below]. Compliance with the tolerance levels specified in the following table [below] is to be determined by measuring only thifensulfuron methyl (methyl 3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino] sulfonyl]-2-thiophenecarboxylate).

(c) *Tolerances with regional registrations.* Tolerances are established for residues of thifensulfuron methyl, including its metabolites and degradates, in or on the commodities listed in the following table [below]. Compliance with the tolerance levels specified in the following table [below] is to be determined by measuring only thifensulfuron methyl (methyl 3-[[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]amino] sulfonyl]-2-thiophenecarboxylate).

Commodity	Parts per million
Safflower, seed .....	0.05

\* \* \* \* \*

[FR Doc. 2010-8135 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-S**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 2, 90, and 95

[WP Docket No. 07-100, FCC 10-36]

#### PLMR Licensing; Frequency Coordination and Eligibility Issues

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) considers rule changes to certain of its rules that were addressed in a previous decision in this proceeding. In that decision, the Commission proposed various changes to its rules regarding PLMR licensing, including frequency coordination and eligibility issues. This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new

wireless technologies, devices and services, and are easy for the public to understand.

**DATES:** Effective May 14, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Rodney P. Conway, at [Rodney.Conway@FCC.gov](mailto:Rodney.Conway@FCC.gov), Wireless Telecommunications Bureau, (202) 418-2904, or TTY (202) 418-7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order* ("Second R&O") in WP Docket No. 07-100, FCC 10-36, adopted on March 3, 2010, and released March 10, 2010. In a *Notice of Proposed Rulemaking and Order* (NPRM and Order) published at 72 FR 32582, June 13, 2007, in this proceeding, the Commission proposed various changes to its rules regarding PLMR licensing, including frequency coordination and eligibility issues. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: <http://www.fcc.gov>. Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

1. Part 90 contains the rules for both the Private Land Mobile Radio (PLMR) Services and certain Commercial Mobile Radio Services (CMRS). PLMR licensees generally do not provide for-profit communications services. Some examples of PLMR licensees are public safety agencies, businesses that use radio only for their internal operations, utilities, transportation entities, and medical service providers. CMRS licensees, by comparison, do provide for-profit communications services, such as paging and Specialized Mobile Radio services that offer customers communications that are interconnected to the public switched network.

2. *Frequency Coordination and Related Matters.* Applications for new and modified part 90 stations generally require frequency coordination before the application is submitted to the Commission, but certain types of applications are exempt from the frequency coordination requirement because they do not "have an impact on near-term frequency selections." The NPRM sought comment on whether to permit licensees to forgo frequency

coordination for other types of applications.

3. In the *NPRM*, the Commission noted that certain PLMR licensees are permitted to modify their licenses to authorize CMRS operations (and subsequently to modify such licenses to revert to PLMR operations), and proposed to exempt such modifications from the frequency coordination requirement because frequency coordinators do not make recommendations regarding changes between private and commercial status. With respect to PLMR-to-CMRS conversions, we agree with Land Mobile Communications Council (LMCC) and Motorola that we should retain the requirement for prior coordination. Such conversions involve interconnection with the public switched telephone network, which typically results in much higher levels of airtime usage on a channel. Such increased usage can affect other licensees, and for this reason we conclude that frequency coordinators should evaluate the implications of any proposed conversions to CMRS. We agree with the commenters, however, that frequency coordination should not be required when a licensee reverts from CMRS to PLMR operations, and amend our rules accordingly.

4. The *NPRM* also sought comment on whether to eliminate the frequency coordination requirement for applications where the only change is a reduction in authorized bandwidth on the licensed center frequencies. Half of the commenters addressing this issue argue that frequency coordination should be required for any change in technical parameters, including a reduction in authorized bandwidth, to protect nearby co-channel and adjacent channel licensee operations from new and potentially harmful interference. The other commenters contend that frequency coordination is not necessary for modifications that propose only a reduction in bandwidth on the licensee's currently authorized center frequency, because such a reduction cannot have an adverse impact on co-channel or adjacent channel licensees. They emphasize that such an exemption from the frequency coordination requirement should be limited to applications proposing only to reduce channel bandwidth while remaining on the original center frequency, and not seeking any other changes to the existing license, such as converting from analog to digital emission.

5. We agree that a simple reduction in authorized bandwidth cannot adversely impact co-channel or adjacent channel licensees. We therefore find no need for

a coordinator to review the proposal in advance. Removing the frequency coordination requirement for applications that modify existing licenses by reducing authorized bandwidth will not undermine the purpose of the frequency coordination process, *i.e.*, to ensure the quality of frequency selections, expedite licensing, and improve spectrum efficiency to the benefit of private land mobile users. It therefore is in the public interest and is consistent with the Commission's goal of reducing unnecessary regulatory burdens on licensees. In addition, we note that most PLMR licensees below 512 MHz will be required to migrate from 25 kHz operation to 12.5 kHz or narrower operation on their existing frequencies, and we find that removing the frequency coordination requirement for such applications will further the upcoming narrowbanding transition without disturbing the integrity of the frequency coordination process or the Commission's overall spectrum management objectives. As a result, we amend our rules to provide an exemption from the frequency coordination requirement for modification applications that only reduce authorized bandwidth while remaining on the original center frequencies, and do not seek any other changes in technical parameters.

6. In addition, the *NPRM* invited commenters to suggest other types of applications for which frequency coordination should no longer be required. We agree with Sprint Nextel that applications seeking to modify licenses by lowering antenna height and/or decreasing power should be exempted from frequency coordination. Not only would this have no adverse impact on co-channel or adjacent channel licensees, but, as Sprint Nextel points out, frequency coordinators do not recommend changes to applications seeking such modifications, and the technical information is readily available in the Universal Licensing System (ULS) database. Such modifications are similar in their effect on other licensees to applications to eliminate frequencies or transmitter site locations, for which frequency coordination is no longer required. We amend our rules accordingly.

7. *Mobile Repeaters*. The *NPRM* proposed to delete § 90.247(b) of the Commission's rules, which states that for Industrial/Business Pool frequencies below 450 MHz, only low power frequencies (where power is limited to two watts) may be assigned for use by mobile repeaters and associated hand-held units, when separate frequencies are assigned for that purpose. The

commenters generally support the proposal. Only Forest Industries Telecommunications (FIT) is concerned that removal of the mobile repeater power limits will lead to a "power war" among licensees, resulting in harmful interference to other licensees on those channels. While we understand FIT's concern, we believe that the benefits of greater flexibility from allowing mobile repeaters on full-power channels outweighs the speculative possibility of harmful interference, particularly given that mobile repeaters typically are deployed for a limited period of time. We note that mobile repeaters require frequency coordination, and the Commission's rules require licensees to work together to solve any interference issues. Operators may also be subject to enforcement action for causing interference to other users. As a result, we find that modification of our rules to remove the channel restriction concerning mobile repeaters below 450 MHz is appropriate. Similarly, we agree with Motorola that we should eliminate the related limitation in § 90.247(c) of the Commission's rules, which limits to 2.5 watts the output power of hand-held transmitters that communicate by way of a mobile repeater. Of course, such transmitters and mobile repeaters will be subject to other relevant part 90 power limitations, and may not exceed the Commission's radio frequency exposure criteria. Should mobile repeater operations under the rules as amended result in interference to other users, we may revisit this issue to examine whether we should address the situation by, for example, reinstituting power limits or limiting the service area radius for mobile repeaters.

8. Motorola also notes that § 90.247(f) requires mobile repeaters to be controlled using a "continuous coded tone." This term is an analog reference, which Motorola recommends be replaced with "continuous access signal," which will accommodate both digital and analog control techniques. We agree, and will amend § 90.247 accordingly.

9. *Expired Licenses*. In general, frequencies associated with expired licenses become available for reassignment once the license is deleted from the Commission's ULS database of active licenses (*i.e.*, the license's status in ULS is changed from Active to Expired or Canceled). Ordinarily, there is a delay between the date a license expires and the date its status is changed from Active to Expired in our licensing records. During that period, frequency coordinators may select a frequency associated with the expired license for recommendation to the

Commission (coordinate the frequency), but the Commission does not accept applications for the frequency until the frequency becomes available for reassignment.

10. LMCC notified the Commission in 2004 that all part 90 frequency coordinators agreed not to coordinate frequencies associated with an expired license until the frequencies become available for reassignment, and requested the Commission's cooperation in enforcing this policy. As a result, the *NPRM* sought comment on whether the rules should be amended to prohibit the coordination of frequencies associated with expired licenses until those frequencies are deleted from the ULS database. In response, LMCC reports that the agreement has operated properly since 2004. While some commenters favor codifying the agreement in the Commission's rules, we agree with LMCC that no rule changes are required, and the Commission need only enforce the policy in the event that a third party objects to a premature coordination.

11. *Multiple Licensing*. As explained in the *NPRM*, most PLMR communication systems employ mobile relays (repeaters) with wide-area coverage so that communication may be maintained between mobile units that otherwise would be out of range of one another. It is common practice for an entity that owns and operates a repeater to share a base station with a number of other users. Under this practice, each user of the mobile relay station (commonly called a "community repeater") applies for and obtains an individual license for the station. Thus, a single base station is licensed to multiple users. The *NPRM* sought comment on the continued usefulness of multiple licensing, given that changes in the Commission's rules have created new means for multiple entities to share facilities or spectrum, or otherwise meet their communications needs.

12. Most commenters argue that multiple licensing continues to serve an important purpose and should be retained. We agree that multiple licensing provides for a cost effective licensing option to entities while also facilitating efficient use of spectrum. Therefore, we conclude that there are public interest benefits in allowing multiple licensing of the same facility, and we will take no action to phase it out at this time.

13. *Industrial/Business Pool Eligibility*. Section 90.35 of the Commission's rules permits entities engaged in, *inter alia*, "[t]he operation of a commercial activity" to operate on Industrial/Business Pool frequencies,

and by its language does not expressly exclude State or local government entities from eligibility. The *NPRM* concluded that § 90.35 is flexible, and that activities such as the operation of a utility, golf course, *etc.*, whether conducted by a government entity or a private entity, are "commercial activities" within the meaning of the rule. It sought comment on whether to amend § 90.35 to expressly provide that governmental entities are eligible to use Industrial/Business Pool frequencies for commercial enterprises.

14. Every commenter addressing the issue supports amending § 90.35 to clarify that State and local government entities are eligible for Industrial/Business Pool frequencies when they engage in commercial activities. Some commenters, while supporting the rule change, indicate that the Commission should condition such authorizations to prevent the use of Industrial/Business Pool frequencies for mission-critical public safety services. We agree that State and local government entities should be able to be licensed for Industrial/Business Pool spectrum for use in commercial activities but not for public safety operations. We amend § 90.35(a) accordingly.

15. The *NPRM* also sought comment on a request that the Commission's rules be amended to permit government surveying operations to utilize Industrial/Business Pool itinerant frequencies. Commenters unanimously support this request, stating that it would enable government entities to utilize modern surveying equipment, which currently is manufactured to operate only on Industrial/Business Pool frequencies. We agree with the commenters, and will amend the rules to permit government surveying operations to utilize the Industrial/Business Pool itinerant frequencies.

16. *Disturbance of AM Broadcast Station Antenna Patterns*. The *NPRM* requested comment on whether to modify part 90 to include provisions for the correction of any disturbance of AM broadcast stations' antenna patterns by new land mobile towers and antennas. We agree with commenters' consensus that this issue would be more appropriately considered in another pending Commission proceeding, so we will not amend part 90 at this time.

17. *FB8T Station Class*. In 2000, the Commission established a new station class code, FB8, to identify those trunked radio systems' base and mobile relay channels that are not subject to a monitoring requirement because the applicant/licensee has obtained the necessary consent from co-channel licensees or has exclusive use of the

channel. All channels associated with a centralized trunked system and any channels in a hybrid system for which the necessary consent has been obtained or that are licensed on an exclusive basis must have an FB8 code for the base/mobile relay station.

Approximately thirty-five authorizations were subsequently issued with a station class of FB8T, allowing temporary use of base and mobile relay channels in systems that are not subject to a monitoring requirement.

Authorizing temporary base stations anywhere within a licensee's authorized operating area could, however, allow the licensee to expand the contour of its unmonitored operations into areas where it does not have exclusivity, which could result in interference to other licensees. Consequently, we no longer issue authorizations for systems with a station class of FB8T.

18. In the *NPRM*, the Commission proposed to renew existing FB8T authorizations with a station class code of FBT (temporary base) in order to make it clear that these operations are subject to the monitoring requirement, and sought comment on whether any corresponding amendment to part 90 was necessary. Commenters support the proposal, but an applicant whose FB8T application subsequently was granted as FBT suggested that station class code FB6T (the station class code used for decentralized trunked temporary stations) is more appropriate. We agree that current FB8T stations should use a more specific station class code than FBT. As a result, we hereby clarify that FB8T stations will be renewed as FB2T (private, internal systems) or FB6T (for-profit private carriers), as appropriate. No rule changes or other action are necessary to implement this proposal at this time.

19. *Reorganization of Part 90*. The *NPRM* sought comment on whether it would be appropriate to reorganize the part 90 rules. It noted that many of the services regulated under part 90 differ significantly from the "traditional" PLMR services on which the original part 90 rules were premised in 1978, and that the current rules cover PLMR and CMRS services, site-based and geographically licensed services, and public safety and non-public safety services, on frequencies ranging from 530 kHz to 4990 MHz. Nearly all of the commenters addressing this issue believe that changing the organizational structure of the part 90 rules is unnecessary and would likely result in a more complex regulatory burden being placed on Commission licensees without any likely benefit to the licensees or the Commission.

Accordingly, we decline to adopt any structural changes to the part 90 rules.

20. *Editorial Amendments.* Finally, we take this opportunity to make minor editorial amendments to part 90. Specifically, we amend § 90.35(b)(3) to associate the correct limitations with frequency 27.86 MHz and frequency band 5850–5925 MHz. We also take this opportunity to remove references in §§ 90.35 and 90.267 to the freeze on high power applications for 12.5 kHz offset channels in the 460–470 MHz band, which has expired. Additionally, we amend the table in § 90.103 to correct references to certain limitations that were renumbered in another proceeding, and to delete a reference to the International Fixed Public Radiocommunications Service, which was eliminated in another proceeding. Further, we amend § 175(j)(5) to remove references to frequencies that have been redesignated from part 90 to part 95. We also amend § 90.621(a) to restore language that was inadvertently deleted when the rule was amended in another proceeding. Further, we utilize this opportunity to amend §§ 90.353(f) and 90.357(a) to correct typographical errors.

21. *Wireless Medical Telemetry Issues.* The Wireless Medical Telemetry Service (WMTS) was established in 2000 to enhance the reliability of medical telemetry equipment that is vital to the effective care of patients with acute and chronic health problems, and to ensure that wireless medical telemetry devices can operate free of harmful interference. Fourteen megahertz of spectrum, in three bands, was allocated for WMTS operations. The band 1427–1432 MHz is shared between medical and non-medical telemetry operations. Generally, WMTS has primary status in the lower half of the band (1427–1429.5 MHz), and non-medical telemetry in the upper half of the band (1429.5–1432 MHz). Non-medical telemetry licensees may not exceed a measured or predicted field strength of 150 µV/m into the WMTS portion of the band at the site of any WMTS operation. WMTS operations are licensed by rule, without separate Commission authorization, but must be registered with the American Society of Health Care Engineering of the American Hospital Association (ASHE), the WMTS frequency coordinator, prior to operation.

22. In addition, in order to avoid interference between medical and non-medical telemetry operations in the 1427–1432 MHz shared band, ASHE and the part 90 frequency coordinators are required to share with each other information about newly deployed WMTS equipment and part 90

frequency recommendations. At the Commission's request, ASHE and LMCC formulated a mutually agreeable coordination plan, which was filed with the Commission on August 18, 2004. The *NPRM* tentatively concluded that implementation of the joint ASHE–LMCC coordination agreement would be in the public interest because it will further the Commission's continuing efforts to ensure protection of WMTS operations from harmful interference, and sought comment on whether the ASHE–LMCC coordination agreement should be reflected in the rules.

23. The agreement sets forth different coordination procedures, depending on whether medical telemetry and non-medical telemetry are co-channel or adjacent channel, and whether each is primary or secondary. The WMTS service rules in part 95 do not explicitly authorize WMTS systems to operate on a secondary basis on those portions of the 1427–1432 MHz shared band where non-medical telemetry is primary. In response to conflicting requests, the *NPRM* sought comment on amending the rules to clarify whether such operations are permitted.

24. Commenters support the joint ASHE–LMCC coordination agreement and agree that it should be cross-referenced or codified in the rules. We conclude, however, that no rule change is necessary or appropriate. The ASHE–LMCC agreement is self-executing. As the *NPRM* concluded, the agreement does not conflict with the existing rules. Codification or incorporation by reference of the agreement would prevent ASHE and LMCC from making amendments to the agreement by mutual consent. Moreover, our decision not to amend the rules to reflect the agreement is consistent with our current treatment of other agreements between or among other frequency coordinators, which are not codified or incorporated by reference in the rules.

25. Commenters are split on the issue of whether WMTS operations should be permitted to operate on a secondary basis in the portions of the 1427–1432 MHz band where non-medical telemetry has primary status. Some WMTS operations in the portions of the 1427–1432 MHz band where non-medical telemetry has primary status already are registered with ASHE. ASHE and one equipment manufacturer argue that the part 95 rules should be amended to expressly permit such WMTS operations. Philips states that many secondary WMTS devices operate free from unwanted interference because they use smart radio technology with cognitive functions, which can sense and avoid other transmissions, and

change channels if necessary. ASHE supports permitting secondary WMTS operations, but suggests that WMTS users be notified and cautioned that such operations should not be relied upon for functions that are critical to patient safety, because secondary operations would be subject to receiving interference from part 90 operations. On the other hand, LMCC and two manufacturers request that WMTS not be permitted to operate on a secondary basis in the non-medical telemetry portion of the band because patient health and safety could be jeopardized. LMCC states that nearly all WMTS systems implemented at health-care facilities are deployed and registered by the equipment manufacturer and not by facility telecommunications staff, so health-care facility personnel do not understand that they have only secondary status on certain frequencies.

26. The Commission created the WMTS in order to make available spectrum where medical telemetry services could operate on a primary basis, free from harmful interference. The authorization of secondary WMTS operations would subject such operations to the same interference concerns that the WMTS allocation was intended to address. We conclude, based on the current record, that permitting WMTS devices to operate on a secondary basis is not in the public interest, because of the risk of unwanted interference that can jeopardize patient safety. In addition, we note that while the 1427–1432 MHz band is the most commonly utilized WMTS band, it is not the only WMTS band available. WMTS devices are authorized to operate on a primary basis on a total of fourteen megahertz of spectrum, and the record does not establish that secondary spectrum is needed to meet WMTS communication needs. Accordingly, we amend § 95.1111 of the Commission's rules to clarify that the registration of WMTS devices on those portions of the 1427–1432 MHz band where WMTS operations do not hold primary status is prohibited. WMTS devices already registered to operate on secondary frequencies will be grandfathered, and may continue operating for the time being. Nonetheless, we encourage users of such equipment to investigate whether those operations can or should be migrated to primary WMTS frequencies in order to maximize patient safety.

27. We adopt ASHE's suggested editorial revisions to §§ 90.259(b)(4) (to clarify one of the carve-out areas); 95.1101, 95.1103(c), 95.1111(a) (to clarify the registration and notification process), 95.1115(a) and (d) and 95.1121

(to clarify that WMTS operates beyond the 1427–1429.5 MHz segment in the carve-out areas). ASHE further requests that the Commission amend both §§ 95.1105 and 95.1115 of the Commission's rules to make it “even more expressly understood” that authorized health care providers are licensed by rule to operate WMTS equipment only when the registration requirements in § 95.1111(a) have been met. We do not find such clarification necessary. Sections 95.1105 and 95.1111 clearly state that frequency coordination is required prior to commencement of WMTS operations. The Commission to date has not received any complaints from operators of WMTS devices about the clarity and meaning of these rules, and no incidents have been reported where WMTS operations were commenced prior to registration with ASHE. Therefore, we believe that the relevant language in the part 95 rules is sufficient. Similarly, we also reject Itron's proposal that the rules should specify that WMTS users must coordinate operations prior to construction, because we are not persuaded that the current pre-activation registration requirement is inadequate. Moreover, we reject LMCC's proposal that the rules be amended to require ASHE to notify part 90 coordinators using the same electronic batch filing format that the part 90 coordinators use to notify each other of part 90 coordinations. We agree with ASHE that such details should be negotiated between the parties.

## I. Procedural Matters

### A. *Ex Parte* Rules—Permit-but-Disclose Proceeding

28. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

### B. Paperwork Reduction Act

29. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

## II. Final Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *NPRM* in this proceeding was incorporated in the *NPRM*. See 5 U.S.C. 603. Written public comments were requested on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. See 5 U.S.C. 604. The Commission will send a copy of the *Second R&O*, including this FRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, a copy of the *Second R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

### *Need for, and Objectives of, the Proposed Rules*

31. This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new wireless technologies, devices and services, and are easy for licensees to comprehend and understand. We believe it appropriate to review all of our regulations relating to administering Private Land Mobile Radio (PLMR) Services to determine which regulations can be clarified, streamlined or eliminated. In the *NPRM*, we sought comment on miscellaneous rule amendments that were intended to clarify part 90 of the Commission's rules. In addition, the *NPRM* sought comment on eliminating certain regulatory requirements contained in part 90 of the Commission's rules. The *NPRM* also sought comment regarding changes to the rules governing the part 95 Wireless Medical Telemetry Service, to clarify those rules and implement a joint coordination agreement among the relevant frequency coordinators. We also solicited comment on other potential part 90 rules changes, including suggestions to revise or eliminate provisions that are duplicative, outmoded or otherwise unnecessary.

### *Legal Basis for Proposed Rules*

32. Authority for issuance of this item is contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

### *Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

33. No comments were submitted specifically in response to the IRFA. However, some commenters to the *NPRM* contend that the Commission's

suggestion that part 90 be reorganized would result in a more complex regulatory burden on Commission licensees. We have considered the potential economic impact on small entities of these rules, and we have considered alternatives that would reduce the potential economic impact of the rules enacted herein, regardless of whether the potential economic impact was discussed in any comments.

### *Description and Estimate of the Number of Small Entities to Which the Final Rules Will Apply*

34. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” See 5 U.S.C. 601(6). In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act. See 5 U.S.C. 601(3). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). See Small Business Act, 5 U.S.C. 632 (1996). A small organization is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” See 5 U.S.C. 601(4). Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes proposed in the *NPRM*.

35. *Private Land Mobile Radio Licensees*. Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA rules do, however, contain a size standard for small radiotelephone (wireless) companies which encompasses, business entities engaged in radiotelephone communications employing no more than 1,500 persons. See 13 CFR 121.201, NAICS code 517212. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engaged in radiotelephone communications

employing no more than 1,500 persons. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz. *See* Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121.

36. *Frequency Coordinators.* Neither the Commission nor the SBA has developed a small business size standard specifically applicable to spectrum frequency coordinators. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." *See* 13 CFR 121.201, NAICS code 517212. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. *See* 13 CFR 121.201, NAICS code 517211. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. *See* 13 CFR 121.201, NAICS code 517212. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

37. *RF Equipment Manufacturers.* The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." *See* 13 CFR 121.201, NAICS code 334220. The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for

2002, there were a total of 1,041 establishments in this category that operated for the entire year. *See* U.S. Census Bureau, *American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005)*. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

38. *Hospitals, Nursing Care Facilities, and Other Residential Care Facilities.* The SBA has developed small business size standards for these three categories and other, related categories. For the commercial census category of General Medical and Surgical Hospitals, the SBA deems an entity to be small if it has \$31.5 million or less in annual revenues. *See* 13 CFR 121.201, NAICS code 622110. Census Bureau data for 2002 show that there were 3,200 firms in this category that operated for the entire year. *U.S. Census Bureau, 2002 Economic Census, Subject Series: Health Care and Social Assistance, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 622110 (issued Nov. 2005)*. Of this total, 1,313 firms had revenues of under \$25 million, and 471 had revenues of \$25 million to \$49,999,999. Thus, in this category, over 41 percent of the firms can be considered small. For the category of Nursing Care Facilities, the SBA deems an entity to be small if it has \$12.5 million or less in annual revenues. *See* 13 CFR 121.201, NAICS code 623110. Census Bureau data for 2002 show that there were 7,826 firms in this category that operated for the entire year. *U.S. Census Bureau, 2002 Economic Census, Subject Series: Health Care and Social Assistance, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 623110 (issued Nov. 2005)*. Of this total, 6,594 firms had revenues of under \$10 million, and 871 had revenues of \$10 million to \$24,999,999. Thus, in this category, the majority of firms can be considered small. For the category of Other Residential Care Facilities, the SBA deems an entity to be small if it has \$6.5 million or less in annual revenues. *See* 13 CFR 121.201, NAICS code 623990. Census Bureau data for 2002 show that there were 3,131 firms in this category that operated for the entire year. *U.S. Census Bureau, 2002 Economic Census, Subject Series: Health Care and Social Assistance, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 623990 (issued Nov. 2005)*.

Of this total, 2,774 firms had revenues of under \$5 million, and 202 had revenues of \$5 million to \$9,999,999. Thus, in this category, the majority of firms can be considered small.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

39. There are no projected reporting, recordkeeping or other compliance requirements.

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

40. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See* 5 U.S.C. 603(c).

41. We believe the changes adopted in the *2nd R&O* will promote flexibility and more efficient use of the spectrum, reduce administrative burdens on both the Commission and licensees, and allow licensees to better meet their communication needs. In this *2nd R&O*, we will not change rules concerning multiple licensing because it still appears to be a viable and is not obsolete. Additionally, the *2nd R&O* decides that determining the feasibility of protection to broadcast AM station antenna patterns in part 90 of our rules would be best handled in another ongoing Commission proceeding. The *2nd R&O* also clarifies the Commission's stance on the discontinuance of station classes FB8T and MO8T. The *2nd R&O* declines to reorganize the part 90 rules. The *2nd R&O* also clarifies that WMTS operations are not permitted on a secondary basis.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

42. None.

### **III. Ordering Clauses**

43. Pursuant to §§ 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 403, that this *Second FNPRM* is hereby adopted.

44. Notice is hereby given of the proposed regulatory changes described in this *Second FNPRM* and comment is sought on these proposals.

45. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Second FNPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

#### List of Subjects in 47 CFR Parts 2, 90, and 95

Communications equipment, Radio, Reporting and recordkeeping requirements.

**Marlene H. Dortch,**  
Secretary, Federal Communications Commission.

#### Final Rules

■ Parts 2, 90 and 95 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

#### PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

**Authority:** 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106 is amended by revising note US350 to read as follows:

##### § 2.106 Table of Frequency Allocations

\* \* \* \* \*

US350 In the band 1427–1432 MHz, Federal use of the land mobile service and non-Federal use of the fixed and land mobile services is limited to telemetry and telecommand operations as described further:

(a) *Medical operations.* The use of the band 1427–1432 MHz for medical

telemetry and telecommand operations (medical operations) shall be authorized for both Federal and non-Federal stations.

(1) Medical operations shall be authorized in the band 1427–1429.5 MHz in the United States and its insular areas, except in the following locations: Austin/Georgetown, Texas; Detroit and Battle Creek, Michigan; Pittsburgh, Pennsylvania; Richmond/Norfolk, Virginia; Spokane, Washington; and Washington, DC metropolitan area (collectively, the “carved-out” locations). See Section 47 CFR 90.259(b)(4) for a detailed description of these areas.

(2) In the carved-out locations, medical operations shall be authorized in the band 1429–1431.5 MHz.

(3) Medical operations may operate on frequencies in the band 1427–1432 MHz other than those described in paragraphs (a)(1) and (2) only if the operations were registered with a designated frequency coordinator prior to April 14, 2010.

(b) *Non-medical operations.* The use of the band 1427–1432 MHz for non-medical telemetry and telecommand operations (non-medical operations) shall be limited to non-Federal stations.

(1) Non-medical operations shall be authorized on a secondary basis to the Wireless Medical Telemetry Service (WMTS) in the band 1427–1429.5 MHz and on a primary basis in the band 1429.5–1432 MHz in the United States and its insular areas, except in the carved-out locations.

(2) In the carved-out locations, non-medical operations shall be authorized on a secondary basis in the band 1429–1431.5 MHz and on a primary basis in the bands 1427–1429 MHz and 1431.5–1432 MHz.

\* \* \* \* \*

#### PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 3. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 4. Section 90.20 is amended by adding paragraph (e)(7) to read as follows:

##### § 90.20 Public Safety Pool

\* \* \* \* \*

(e) \* \* \*

(7) Frequencies governed by § 90.35(c)(17).

\* \* \* \* \*

■ 5. Amend § 90.35 as follows:

■ a. Remove paragraphs (c)(61)(v) and (c)(68)(iv).

■ b. Add paragraphs (a)(5) and (c)(91).

■ c. In the table of paragraph (b)(3) place the entry for “5850–5925” in numerical order.

■ d. In the table of paragraph (b)(3), revise the entries for “27.86” and “5850–5925”.

■ e. Revise paragraph (c)(67).

The additions and revisions read as follows:

##### § 90.35 Industrial/Business Pool.

(a) \* \* \*

(5) Public Safety Pool eligibles are eligible for Industrial/Business Pool spectrum only to the extent that they are engaged in activities listed in paragraphs (a)(1) through (4) of this section. Industrial/Business Pool spectrum may not be utilized for the purposes set forth in § 90.20(a).

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

#### INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
27.86	Base or mobile	89.	
5850–5925	.....do	90, 91	Not applicable.

\* \* \* \* \*

(c) \* \* \*

(67) Medical telemetry operations are authorized on this frequency on a secondary basis. Medical telemetry operations are subject to the provisions of § 90.267(h)(2).

\* \* \* \* \*

(91) Subpart M of this part contains rules for assignment of frequencies in the 5850–5925 MHz band.

\* \* \* \* \*

■ 6. Section 90.103 is amended by revising the entries in the table in paragraph (b) for “1900 to 1950,” “1950

to 2000,” “13,750 to 14,000,” and paragraph (c)(1), to read as follows:

##### § 90.103 Radiolocation Service.

\* \* \* \* \*

(b) \* \* \*



Frequency or band	Class of station(s)	Limitation(s)
<b>Kilohertz</b>		
* * * * *		
1900 to 1950 .....	.....do .....	6, 25, 26, 27 and 28.
1950 to 2000 .....	.....do .....	6, 25, 27 and 28.
<b>Megahertz</b>		
* * * * *		
13,750 to 14,000 .....	.....do .....	29.
* * * * *		

(c) \* \* \*

(1) This frequency band is shared with and stations operating in this frequency band in this service are on a secondary basis to stations licensed in the Maritime Mobile Service.

\* \* \* \* \*

■ 7. Section 90.175 is amended by revising paragraph (j)(5) and adding paragraphs (j)(19), (j)(20), and (j)(21) to read as follows:

**§ 90.175 Frequency coordinator requirements.**

\* \* \* \* \*

(j) \* \* \*

(5) Applications in the Industrial/Business Pool requesting a frequency designated for itinerant operations.

\* \* \* \* \*

(19) Applications filed exclusively to return channels that had been authorized for commercial operation pursuant to § 90.621(e) or (f) to non-commercial operation (including removal of the authorization to interconnect with the public switched telephone network).

(20) Applications for a reduction in the currently authorized emission bandwidth or a deletion of an existing emission designator.

(21) Applications for a reduction in antenna height or authorized power.

■ 8. Section 90.247 is amended by removing and reserving paragraphs (b) and (c) and revising paragraph (f) to read as follows:

**§ 90.247 Mobile repeater stations.**

\* \* \* \* \*

(f) When automatically retransmitting messages originated by or destined for hand-carried units, each mobile station shall activate the mobile transmitter only with a continuous access signal, the absence of which will de-activate the mobile transmitter. The continuous access signal is not required when the mobile unit is equipped with a switch

that activates the automatic mode of the mobile unit and an automatic time-delay device that de-activates the transmitter after any uninterrupted transmission period in excess of 3 minutes. For the purposes of this rule section the continuous access signal can be achieved by use of digital or analog methods.

■ 9. Section 90.259 is amended by revising paragraph (b)(4)(ii) to read as follows:

**§ 90.259 Assignment and use of frequencies in the bands 216–220 MHz and 1427–1432 MHz.**

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(ii) Washington, DC metropolitan area—Counties of Montgomery, Prince George's and Charles in Maryland; Counties of Arlington, Prince William, Fauquier, Loudon, and Fairfax, and Cities of Alexandria, Falls Church, Fairfax, Manassas and Manassas Park in Virginia; and District of Columbia;

\* \* \* \* \*

**§ 90.267 [Amended]**

■ 10. Section 90.267 is amended by removing paragraph (e)(3) and redesignating paragraph (e)(4) as (e)(3).

■ 11. Section 90.353 is amended by revising paragraph (f) to read as follows:

**§ 90.353 LMS operations in the 902–928 MHz band.**

\* \* \* \* \*

(f) Multilateration EA licensees may be authorized to operate on both the 919.75–921.75 MHz and 921.75–927.75 MHz bands within a given EA (see § 90.209(b)(5)).

\* \* \* \* \*

■ 12. Section 90.357 is amended by revising paragraph (a) to read as follows:

**§ 90.357 Frequencies for LMS systems in the 902–928 MHz band.**

(a) Multilateration LMS systems will be authorized on the following LMS sub-bands:

LMS sub-band	Forward link <sup>1</sup>
904.000–909.750 MHz.	927.750–928.000 MHz.
919.750–921.750 MHz. <sup>2</sup>	927.500–927.750 MHz.
921.750–927.250 MHz.	927.250–927.500 MHz.

<sup>1</sup> Forward links for LMS systems may also be contained within the LMS sub-band. However, the maximum allowable power in these sub-bands is 30 Watts ERP in accordance with § 90.205(l).

<sup>2</sup> The frequency band 919.750–921.750 MHz is shared co-equally between multilateration and non-multilateration LMS systems.

\* \* \* \* \*

■ 13. Section 90.621 is amended by revising paragraph (a) to read as follows:

**§ 90.621 Selection and assignment of frequencies.**

(a) Applicants for frequencies in the Public Safety and Business/Industrial/Land Transportation Categories must specify on the application the frequencies on which the proposed system will operate pursuant to a recommendation by the applicable frequency coordinator. Applicants for frequencies in the SMR Category must request specific frequencies by including in their applications the frequencies requested.

(1) For trunked systems, the assignment of frequencies will be made in accordance with applicable loading criteria and in accordance with the following:

(i) Channels will be chosen and assigned in accordance with §§ 90.615, 90.617, or 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.



(iii) There are no limitations on the number of frequencies that may be trunked. Authorizations for non-SMR stations may be granted for up to 20 trunked frequency pairs at a time in accordance with the frequencies listed in §§ 90.615, 90.617, and 90.619.

(2) For conventional systems the assignment of frequencies will be made in accordance with applicable loading criteria. Accordingly, depending upon the number of mobile units to be served, an applicant may either be required to share a channel, or, if an applicant shows a sufficient number of mobile units to warrant the assignment of one or more channels for its exclusive use, it may be licensed to use such channel or channels on an unshared basis in the area of operation specified in its application.

(i) Channels will be chosen and assigned in accordance with §§ 90.615, 90.617, or 90.619.

(ii) A mobile station is authorized to transmit on any frequency assigned to its associated base station.

\* \* \* \* \*

## PART 95—PERSONAL RADIO SERVICES

■ 14. The authority citation for part 95 continues to read as follows:

**Authority:** Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303.

■ 15. Section 95.1101 is revised to read as follows:

### § 95.1101 Scope.

This subpart sets out the regulations governing the operation of Wireless Medical Telemetry Devices in the 608–614 MHz, 1395–1400 MHz, and 1427–1432 MHz frequency bands. *See* § 95.630 regarding permissible frequencies.

■ 16. Section 95.1103 is amended by revising paragraph (c) to read as follows:

### § 95.1103 Definitions.

\* \* \* \* \*

(c) *Wireless medical telemetry.* The measurement and recording of physiological parameters and other patient-related information via radiated bi-or unidirectional electromagnetic signals in the 608–614, 1395–1400 MHz and 1427–1432 MHz frequency bands.

■ 17. Section 95.1111 is amended by revising paragraph (a) introductory text and adding paragraph (c) to read as follows:

### § 95.1111 Frequency coordination.

(a) Prior to operation, authorized health care providers who desire to use wireless medical telemetry devices must

register all devices with a designated frequency coordinator. Except as specified in § 95.1105, operation of WMTS equipment prior to registration is not authorized under this part. The registration must include the following information:

\* \* \* \* \*

(c) As of April 14, 2010, no registrations may be accepted for frequencies where WMTS does not have primary status. Previously registered secondary facilities may continue to operate as registered.

■ 18. Section 95.1115 is amended by revising paragraphs (a)(2) and (d)(1) as follows:

### § 95.1115 General technical requirements.

(a) \* \* \*

(2) In the 1395–1400 MHz and 1427–1432 MHz bands, the maximum allowable field strength is 740 mV/m, as measured at a distance of 3 meters, using measuring equipment with an averaging detector and a 1MHz measurement bandwidth.

\* \* \* \* \*

(d) \* \* \*

(1) In the 1395–1400 MHz and 1427–1432 MHz bands, no specific channels are specified. Wireless medical telemetry devices may operate on any channel within the bands authorized for wireless medical telemetry use in this part.

\* \* \* \* \*

■ 19. Section 95.1121 is revised to read as follows:

### § 95.1121 Specific requirements for wireless medical telemetry devices operating in the 1395–1400 and 1427–1432 MHz bands.

Due to the critical nature of communications transmitted under this part, the frequency coordinator in consultation with the National Telecommunications and Information Administration shall determine whether there are any Federal Government systems whose operations could affect, or could be affected by, proposed wireless medical telemetry operations in the 1395–1400 MHz and 1427–1432 MHz bands. The locations of government systems in these bands are specified in footnotes US351 and US352 of § 2.106 of this chapter.

[FR Doc. 2010–7648 Filed 4–13–10; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### 49 CFR Part 22

[Docket No OST–2008–0236]

RIN 2105–AD50

### Short-Term Lending Program (STLP)

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This final rule governs the Short Term Lending Program (STLP), which provides financial assistance in the form of guarantees of short-term revolving lines of credit from Participating Lenders (PLs) to disadvantaged Business Enterprises (DBEs) and other certified small and disadvantaged business (SDBs) in connection with transportation-related contracts at the local, state and federal levels. The program is administered through cooperative agreements between DOT's Office of Small and Disadvantaged Business Enterprise (OSDBU) and Participating Lenders and under the STLP's governing policies and procedures.

**DATES:** This rule is effective May 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Nancy Strine, Financial Assistance Division Manager, U.S Department of Transportation, OSDBU, 1200 New Jersey Ave, SE., Room W56–497, Washington, DC 20590. Telephone: (800) 532–1169 or e-mail: [Nancy.Strine@dot.gov](mailto:Nancy.Strine@dot.gov).

### SUPPLEMENTARY INFORMATION:

#### Background

On August 21, 2008, the Office of Small and Disadvantaged Business Utilization (OSDBU) of the Office of the Secretary (OST) of the Department of Transportation (DOT) issued a Notice of Proposed Rulemaking (NPRM) in Docket OST–2008–0236 proposing to adopt regulations governing its Short Term Lending Program (STLP) and published the NPRM in the **Federal Register**. *See* “Department of Transportation, Office of the Secretary, 49 CFR part 22 [Docket NO: OST–2008–0236], RIN 2105–AD50, 73 FR 49386 *et seq.* (August 21, 2008).” In the NPRM, we announced that we were considering regulations to replace the internal policies and guidelines that had for years been used to manage the STLP.

As noted in the NPRM, the Secretary of Transportation has delegated the authority to carry out the functions in

section 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 (Pub. L. 940–210, as amended) known as the Minority Business Resource Center Program, which includes a guaranteed loan program, to the Director of DOT's OSDBU. 49 U.S.C. 332 authorizes DOT's OSDBU to establish, under the Minority Business Resource Center, programs that would assist disadvantaged business enterprises (DBEs) and small disadvantaged businesses (SDBs) in acquiring access to working capital and to debt financing, in order to obtain transportation-related contracts wholly or partially funded by DOT. To implement this authority, OSDBU developed its Short Term Lending Program (STLP) which offers DBE's and other certified small and disadvantaged businesses short term working capital loans at variable interest rates to perform on these transportation-related contracts.

Initially developed in 1989 as a direct loan program, the STLP was converted in 2001 to a loan guarantee program under which private sector Participating Lenders offer loans with a government guarantee of up to 75 percent for qualified applicants.

These loans are revolving lines of credit that provide working capital funds to assist the borrower in financing the direct labor and material costs of completing transportation contracts. The contracts that are funded are assigned to the loan as collateral, and the Participating Lender advances monies up to 85% of eligible and approved Accounts Receivable that arise from the Assigned Contract(s). The contracts must be transportation-related and receive at least one dollar of DOT funding. Repayment comes in the form of a two-party check to the borrower and to the PL directly from the contract proceeds. The total length of time that an eligible borrower may remain in the program cannot exceed a total of five years.

DOT monitors these loans, which require contract assignments and direct joint payee check remittances for principal repayment, through its relationship with the transportation agencies and recipients that receive DOT funds and the Participating Lenders. In recent years the total funds available for full principal amount of loans under the STLP has been limited to \$18,367,000 per fiscal year.

We pointed out in the NPRM that the STLP has undergone an extensive program review to improve its business processes and achieve operational and financial efficiencies and that, as part of this effort, we were asking for comments

on proposed regulations to replace the internal policies and guidelines that were being used to manage the program. We received no comments in response to the NPRM.

We have determined to adopt the rule as proposed, with one minor exception. In the NPRM, we proposed to include as part of the rule copies of the actual forms to be used by DBEs and Participating Lenders for various aspects of the STLP, such as Loan Activation, Loan Extension, Loan Close-out, and various certifications required for loan applications. Because those forms may be amended and in order to make up-to-date forms more easily accessible to DBEs and Participating Lenders, we have determined that it would be in the public interest to make those forms available through the OSDBU Web site instead of including them with the rule itself. Accordingly, changes to the final rule have been made to accomplish this objective, including providing the appropriate Web site address for each form.

#### *Section-by-Section Analysis*

The proposed regulations utilize objective, plain language in an attempt to make the regulations more understandable to Participating Lenders, DBEs and other small and disadvantaged businesses.

**§ 22.1 Purpose:** The purpose of the DOT OSDBU STLP is to provide financial assistance, in the form of a short-term loan from Participating Lenders that is guaranteed by DOT OSDBU, to DBE's and other certified small businesses for the execution of DOT funded and supported transportation-related contracts.

**§ 22.3 Definitions:** This section contains definitions of common banking and lending terminology included in STLP documents and the STLP Policy and Procedure Manual.

**§ 22.11 Eligibility Criteria:** Paragraph (a) defines those requirements needed in order to qualify for a STLP loan. Paragraph (b) clarifies what instrument qualifies as a "transportation-related contract," and paragraph (c) explains the maximum length of time in which a qualified business may remain as an STLP borrower, as well as what circumstances and documentation are required on an annual basis in order to remain eligible.

**§ 22.13 Loan Terms and Conditions:** Section 22.13 describes the parameters of the Short Term Lending Program, including: maximum loan amount, interest rates, the term and structure of the loan, source of funds for loan repayment, allowable uses of the loan proceeds, how loan disbursements are

made, as well as any personal guarantees, collateral or insurance.

**§ 22.15 Delinquency on Federal, State, or Municipality Debt:** This section provides that the borrower must be current on all federal, state, and local taxes to be able to participate in the program.

**§ 22.17 Compliance with Child Support Obligations:** STLP applicants must submit a certification that he or she is not more than 60 days delinquent in child support payments. The Office of Management and Budget (OMB) Circular No. A–129, Revised (Policies for Federal Credit Programs and Non-Tax Receivables) prohibits individuals that are delinquent in child support obligations from eligibility for Federal financial assistance.

**§ 22.19 Credit Criteria:** Section 22.19 describes the required creditworthiness of an STLP applicant, and lists those aspects of creditworthiness that OSDBU will consider in its evaluation of an STLP application.

**§ 22.21 Participation Criteria:** Section 22.21 describes the criteria for banks in order to qualify as STLP Participating Lenders, including certifications, documentation, history of community involvement, loan experience, and the ability to implement, monitor and manage this loan program.

**§ 22.23 Agreement:** Section 22.23 describes the Cooperative Agreement that is executed between DOT and the Participating Lender that defines the relationship between the two, as well as the responsibilities and obligations of each party with regard to the STLP.

**§ 22.25 Lender Deliverables and Delivery Schedule:** This section describes the obligation of the Participating Lenders to adhere to established deadlines for actions, such as the submission of periodic reports and site visits.

**§ 22.27 Eligible Reimbursements to Participating Lenders:** Section 22.27 describes the fees and expenses for which Participating Lenders are eligible to be reimbursed.

**§ 22.29 DOT Access to Participating Lenders' Files:** Section 22.29 describes the policy that governs DOT access to Participating Lenders' records and files.

**§ 22.31 Suspension or Revocation of Eligibility to Participate:** This section describes the circumstances under which the STLP eligibility of a Participating Lender may be suspended or revoked, and the notification procedure for such an action.

**§ 22.33 Termination of Participation in STLP:** Section 22.33 explains the situations under which the cooperative agreement between DOT OSDBU and

the Participating Lender may be terminated, by either party, and the notification procedure for such action.

**§ 22.41 Application Procedures:** Describes the complete STLP application process, the supporting documentation that must accompany the STLP application, and the submission process of the application to the Participating Lender.

**§ 22.43 Approval or Denial:** Section 22.43 describes what will occur when an application is approved or denied, and the method of notification.

**§ 22.45 Allowable Fees to Borrowers:** This section describes those fees that a Participating Lender may collect from the borrower.

**§ 22.51 Loan Closing:** Section 22.51 discusses the process that the Participating Lender must follow to close and execute an STLP loan to a recipient.

**§ 22.53 Loan Monitoring and Servicing Requirements:** Section 22.53 describes what is required of the Participating Lender insofar as the monitoring and servicing of an STLP loan.

**§ 22.57 Loan Reporting Requirements:** Section 22.57 clarifies that the STLP loan is subject to the Federal Credit Reform Act of 1990, and describes those reporting requirements that a Participating Lender must undertake to keep DOT OSDBU informed of the borrower's compliance with the terms of the STLP loan.

**§ 22.59 Loan Modifications:** Describes the procedure that the Participating Lender must follow for any proposed modifications of the terms of the guarantee agreement between DOT OSDBU and the Participating Lender.

**§ 22.61 Loan Guarantee Extensions:** Section 22.61 describes the process under which an extension of the loan guarantee may be requested and granted.

**§ 22.63 Loan Close Outs:** Section 22.63 describes the process for closing out an STLP loan in DOT's records that has been fully repaid.

**§ 22.65 Subordination:** Section 22.65 describes the parameters of a subordination of the line of credit in which the debt guarantee of DOT OSDBU has priority over any other debt of the borrower.

**§ 22.67 Delinquent Loans and Loan Defaults:** This section describes the notification procedure that a Participating Lender must undertake whenever an STLP loan is delinquent. This section also indicates the possible collection or litigation processes that are available in the event of loan delinquency or default.

**§ 22.69 Claim Process:** Section 22.69 describes the action that the Participating Lender may take once all means for the collection of a delinquent debt have been exhausted.

### Regulatory Analyses and Notices

#### A. Executive Order 12866 (Regulatory Planning and Review)

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order, as it does not have an annual effect on the economy of \$100 million or more, nor affect the economy adversely; does not interfere or cause a serious inconsistency with any action or plan of another agency; does not materially alter the impact of entitlements, grants, user fees or loan programs; and does raise novel legal or policy issues. The rule is essentially a streamlining of the provisions for implementing an existing program, and it will not create additional burdens on program participants.

#### B. Executive Order 12372 (Intergovernmental Review)

The STLP is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development, as the STLP program facilitates the participation of small and disadvantaged businesses in fully or partially federally funded local and state transportation projects.

#### C. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), I certify that this rule will not have a significant economic impact on a substantial number of small entities. The rule will not place burdens on small entities. Rather, the rule is intended to provide benefits to small entities by providing a loan guarantee for DBEs and SDBs who require financial assistance to perform on transportation-related contracts.

#### D. Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this proposed rule under the Order and have determined that it does not have implications for federalism, as the loan program creates relationships and obligations between a borrower (usually a sub-contractor), a prime contractor, a Participating Lender and DOT/OSDBU only.

#### E. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995, DOT has submitted the Information Collection Requests (ICRs) below to the Office of Management and Budget (OMB). Before OMB decides whether to approve these proposed collections of information and issue a control number, the public must be provided 30 days to comment. Organizations and individuals desiring to submit comments on the collection of information should direct them to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Department of Transportation, OSDBU, 1200 New Jersey Ave, SE., Washington, DC 20590. OMB is required to make a decision concerning the collection of information requirements contained in this rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

We will respond to any OMB or public comments on the information collection requirements contained in this rule. OST OSDBU may not impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. OST OSDBU intends to obtain current OMB control numbers for the new information collection requirements resulting from this rulemaking action. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

The ICRs were previously published in the **Federal Register** as part of NPRM [73 FR 49386] and the Department invited interested persons to submit comments on any aspect of these ICRs, including: (1) Whether the proposed collection is necessary for the OSDBU's performance; (2) the accuracy of the estimated burdens; (3) ways for OSDBU to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

For each of these information collections, the title, a description of the entity to which it applies, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below.

It is estimated that the total burden hours for 100 Participating Lenders to qualify as such, monitor loans, comply with monthly reporting and retain loan records to be approximately 8,000 hours per year. It is estimated that the total burden hours for 100 borrowers to complete the STLP application, with supporting documentation, loan renewals and the submission of the same, to be approximately 2,700 hours.

**Title: Short Term Lending Program—Participating Lenders—Qualifying Criteria.**

**Background:** OSDBU's Short Term Lending Program (STLP) offers certified Disadvantaged Business Enterprises (DBEs) and other Certified Small Businesses (8a, women-owned, small disadvantaged, HubZone, veteran-owned, and service-disabled veteran-owned) the opportunity to obtain short-term working capital at prime interest rates for transportation-related projects. The STLP provides up to a 75% guaranteed revolving line of credit for a maximum of \$750,000 to finance accounts receivable arising from transportation-related contracts. The primary collateral consists of the proceeds of the transportation-related contracts. These loans are provided through banks that serve as STLP Participating Lenders (PL).

**Participating Lender Qualifying Criteria**

As a requirement for approval as a Participating Lender, banks must submit documentation that demonstrates:

(A) Their philosophy and history of lending to small and disadvantaged businesses in their communities. As part of their submission, the bank must show these efforts in relationship to its overall lending portfolio.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 3 hours.

*Estimated Total Annual Burden Hours:* 300 hours.

(B) Their experience in administering monitored lines of credit, such as construction loans, accounts receivable financing, and/or contract financing for at least two years. Such experience should be held by any Participating Lender representative managing, reviewing or authorizing STLP loan portfolios.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* ½ hour.

*Estimated Total Annual Burden Hours:* 50 hours.

(C) At least two (2) years experience with other federal government lending programs such as U.S. Small Business Administration (SBA), Agriculture Rural Development, Bureau of Indian Affairs (BIA), Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Export Import Bank of the United States and/or state loan programs.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* ½ hour.

*Estimated Total Annual Burden Hours:* 50 hours.

(D) At least a satisfactory or better Community Reinvestment Act (CRA) rating.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

(E) The ability to implement, monitor and manage a two-party payee check system, in which the Participating Lender and borrower are joint payees of any checks paid to the borrower for performance under the assigned contract(s).

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

(F) That it is not currently debarred or suspended from participation in a government contract or delinquent on a government debt by submitting a current form DOT F 2309–1 Certification Regarding Debarment, Suspension. The certification form is available at [http://www.osdbu.dot.gov/financial/docs/Cert\\_Debarment\\_DOT\\_F\\_2309-1.pdf](http://www.osdbu.dot.gov/financial/docs/Cert_Debarment_DOT_F_2309-1.pdf).

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

(G) That it is a drug-free workplace by executing a current form DOT F 2307–1 Drug-Free Workplace Act Certification for a Grantee Other Than an Individual. The certification form is available at [http://www.osdbu.dot.gov/financial/docs/Cert\\_Drug-Free\\_DOT\\_F\\_2307-1.pdf](http://www.osdbu.dot.gov/financial/docs/Cert_Drug-Free_DOT_F_2307-1.pdf).

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

(H) That no Federal funds will be utilized for lobbying by executing a current form DOT F 2308–1 Certificate Regarding Lobbying For Contracts, Grants, Loans, and Cooperative Agreements in compliance with Section 1352, Title 21, of the U.S. Code. The certification form is available at [http://www.osdbu.dot.gov/financial/docs/Cert\\_Lobbying\\_DOT\\_F\\_2308-1.pdf](http://www.osdbu.dot.gov/financial/docs/Cert_Lobbying_DOT_F_2308-1.pdf).

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden Hours:* 25 hours.

**Participating Lender Record Retention**

A Participating Lender must allow the authorized representatives of OSDBU, as well as representatives of the Office of Inspector General (OIG) and General Accountability Office (GAO), access to its STLP loan files to review, inspect, and copy all records and documents pertaining to OSDBU guaranteed loans. The PL shall retain all documents, files, books, and records relevant to the execution and implementation of the terms of its Cooperative Agreement with OSDBU for a period of not less than three years from the date of termination of the Cooperative Agreement or payment in full from the borrower; except in cases where litigation, collection action, or audit is commenced. In these cases, records and other materials shall be retained until the litigation, collection action, or audit is judicially or administratively final.

*Respondents:* 100.

*Frequency:* Annually.

*Estimated Average Burden per Response:* ½ hour.

*Estimated Total Annual Burden Hours:* 50 hours.

**Participating Lender Reporting Requirements**

The STLP is subject to the requirements of the Federal Credit Reform Act of 1990 (FCRA) that includes certain budgeting and accounting requirements for Federal credit programs. The Participating Lender must undertake processes to activate, monitor, service, and close out STLP loans. To fulfill the requirements of FCRA, the Participating Lender must submit regular reports and required documentation to OSDBU on these processes.

(A) **Loan Activation:** The Participating Lender must submit to OSDBU a form DOT F 2303–1 Bank Verification Loan

Activation Form that indicates the date in which the loan has been activated/funded. The form is available at [http://www.osdbu.dot.gov/financial/docs/Loan\\_Activation\\_DOT\\_F\\_2303-1.pdf](http://www.osdbu.dot.gov/financial/docs/Loan_Activation_DOT_F_2303-1.pdf).

*Respondents:* 100.

*Frequency:* Annually, up to five years.

*Estimated Average Burden per*

*Response:* ½ hour.

*Estimated Total Annual Burden*

*Hours:* 50 hours.

(B) *Loan Close-out:* The Participating Lender must submit to OSDBU a form DOT F 2304–1 Bank Acknowledgement Loan Close-Out Form upon full repayment of the STLP loan, or upon expiration of the loan guarantee. The form is available at [http://www.osdbu.dot.gov/financial/docs/Loan\\_Close-Out\\_DOT\\_F\\_2304-1.pdf](http://www.osdbu.dot.gov/financial/docs/Loan_Close-Out_DOT_F_2304-1.pdf).

*Respondents:* 100.

*Frequency:* Annually.

*Estimated Average Burden per*

*Response:* ½ hour.

*Estimated Total Annual Burden*

*Hours:* 50 hours.

(C) *Monthly Reporting Requirement:* The Participating Lender must submit each month to OSDBU form DOT F 2306–1 Pending Loan Status Report and form DOT F 2305–1 Guaranty Loan Status Report detailing the previous month's activity for their STLP loans. These forms are available at [http://www.osdbu.dot.gov/financial/docs/Pending\\_Loan\\_DOT\\_F\\_2306-1.xls](http://www.osdbu.dot.gov/financial/docs/Pending_Loan_DOT_F_2306-1.xls) and [http://www.osdbu.dot.gov/financial/docs/Guaranty\\_Loan\\_DOT\\_F\\_2305-1.xls](http://www.osdbu.dot.gov/financial/docs/Guaranty_Loan_DOT_F_2305-1.xls) respectively.

*Respondents:* 100.

*Frequency:* Monthly.

*Estimated Average Burden per*

*Response:* 1 hour.

*Estimated Total Annual Burden*

*Hours:* 1,200 hours.

(D) *Call Reports or Thrift Financial Reports:* Participating Lenders shall provide two copies of their quarterly Reports of Condition and Income (Federal Financial Institutions Examination Council—FFIEC Form 041), or quarterly Thrift Financial Reports (Office of Thrift Supervision—OTS Form 1313) within 60 days after the close of each calendar quarter.

*Respondents:* 100.

*Frequency:* Quarterly.

*Estimated Average Burden per*

*Response:* 15 minutes.

*Estimated Total Annual Burden*

*Hours:* 100 hours.

(E) *Credit verification:* The Participating Lender's internal credit approval memo, credit analysis, and any other third-party credit verifications obtained to the process the loan application must accompany their internally-approved loan package submission to OSDBU.

*Respondents:* 100.

*Frequency:* For each loan submitted (minimum 1, approximate maximum 5).

*Estimated Average Burden per*

*Response:* 12 hours.

*Estimated Total Annual Burden*

*Hours:* (1,200, 6,000).

(F) *Loan Guarantee Extension:* The Participating lender must submit to OSDBU a form DOT F 2310–1 to request an extension of the original loan guarantee for a maximum period of ninety (90) days. The form is available at [http://www.osdbu.dot.gov/financial/docs/Loan\\_Extension\\_DOT\\_F\\_2310-1.pdf](http://www.osdbu.dot.gov/financial/docs/Loan_Extension_DOT_F_2310-1.pdf).

*Respondents:* 100.

*Frequency:* Annually.

*Estimated Average Burden per*

*Response:* ½ hour.

*Estimated Total Annual Burden*

*Hours:* 50 hours.

**Loan Application Process—Loan Renewal**

A current STLP participant may submit a guaranteed loan renewal application package, comprised of an updated loan application, with supporting documentation.

(A) *Updated loan application form.* The application may be obtained directly from OSDBU, from a current Participating Lender, or online from the agency's Web site currently at <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>.

*Respondents:* 100.

*Frequency:* Annually, up to five years.

*Estimated Average Burden per*

*Response:* 8 hours.

*Estimated Total Annual Burden*

*Hours:* 800 hours.

(B) *Application supporting documentation.* Supporting documentation may include, but is not limited to, the following items:

a. Current job performance reference letter (within the past 12 months);

b. Evidence of current DBE and/or other eligible certification;

c. Business tax returns for the most recent fiscal year;

d. Business financial statements for the most recent fiscal year;

e. If the business' last fiscal year has ended longer than 90 days at the time of application, then applicant must submit interim business financial statements to include balance sheet, P&L and updated aging reports of both receivables and payables;

f. Current work in progress schedule or statement;

g. Personal income tax returns;

h. Personal financial statements;

i. Signed and dated copy of transportation-related contracts to be used as collateral;

j. Updated cash flow projections;

*Respondents:* 100.

*Frequency:* Annually, up to five years.

*Estimated Average Burden per*

*Response:* 4 hours.

*Estimated Total Annual Burden*

*Hours:* 400 hours.

**New Loan Application Process**

A potential STLP participant must submit a guaranteed loan application package, comprised of a loan application, with supporting documentation.

(A) *Completed loan application form.* The application may be obtained directly from OSDBU, from a current Participating Lender, or online from the agency's Web site currently at <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per*

*Response:* 2 hours.

*Estimated Total Annual Burden*

*Hours:* 200 hours.

(B) New loan application supporting documentation may include, but is not limited to, the following items:

a. Business, trade or job performance reference letters;

b. DBE or other eligible certification letters;

c. Signed and dated borrower certification that all federal, state and local taxes are current;

d. Business tax returns;

e. Business financial statements;

f. Personal income tax returns;

g. Personal financial statements;

h. Schedule of work in progress;

i. Signed and dated copy of transportation-related contracts to be used as collateral;

j. Business debt schedule;

k. Income and cash flow projections;

l. Evidence of bonding and insurance.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per*

*Response:* 12 hours.

*Estimated Total Annual Burden*

*Hours:* 1,200 hours.

(C) *Loan package submission:*

Application packages are submitted directly to a Participating Lender in the applicant's geographic area. The list of Participating Lenders is available on the OSDBU Web site: <http://osdbu.dot.gov/Default.aspx?tabid=72>. In the event that there is no Participating Lender in the applicant's geographic area, the loan application package may be sent directly to OSDBU at 400 Seventh Street, SW., Room 9414, S-40, Attention STLP, Washington, DC 20590.

*Respondents:* 100.

*Frequency:* Once.

*Estimated Average Burden per Response:* 1 hour.

*Estimated Total Annual Burden Hours:* 100 hours.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued this 25th day of March 2010, at Washington, DC.

**Ray LaHood,**

*Secretary of Transportation.*

## List of Subjects in 49 CFR Part 22

Loan programs—Business and industry, Programs, Small business, Transportation, Commerce.

■ For the reasons set forth in this preamble, the Department is adding 49 CFR part 22 as follows:

## PART 22—SHORT-TERM LENDING PROGRAM (STLP)

### Subpart A—General

22.1 Purpose.

22.3 Definitions.

### Subpart B—Policies Applying to STLP Loans

22.11 Eligibility Criteria.

22.13 Loan terms and Conditions.

22.15 Delinquency on Federal, State, and Municipal Debt.

22.17 Compliance with Child Support Obligations.

22.19 Credit Criteria.

### Subpart C—Participating Lenders

22.21 Participation Criteria.

22.23 Agreements.

22.25 Lender Deliverables and Delivery schedule.

22.27 Eligible Reimbursements to Participating Lenders.

22.29 DOT access to Participating Lender Files.

22.31 Suspension or Revocation of Eligibility to Participate.

22.33 Termination of Participation in the STLP.

### Subpart D—Loan Application Process

22.41 Application Procedures.

22.43 Approvals and Denials.

22.45 Allowable Fees to Borrowers.

### Subpart E—Loan Administration

22.51 Loan Closings.

22.53 Loan Monitoring & Servicing Requirements.

22.57 Loan Reporting Requirements.

22.59 Loan Modifications.

22.61 Loan Guarantee Extensions.

22.63 Loan Close Outs.

22.65 Subordination.

22.67 Delinquent Loans and Loan Defaults.

22.69 Claims Process.

**Authority:** 49 U.S.C. 332.

## Subpart A—General

### § 22.1 Purpose.

The purpose of the DOT OSDBU STLP is to provide financial assistance in the form of short-term loans from Participating Lenders that are guaranteed by DOT OSDBU, to DBEs and SDBs for the execution of DOT funded and supported transportation-related contracts.

### § 22.3 Definitions.

As used in this part:

*Accounts receivable* means monies that are due to the borrower for work performed or services rendered under a contract, subcontract, or purchase order.

*Activation date* means the date that the STLP loan is established on the Participating Lender's books and recorded as an open loan. It is also the date that the borrower can begin to drawn funds from the line of credit. Activation date is also the date in which the DOT OSDBU guarantee becomes effective.

*Assigned contract* means the transportation-related contract(s), subcontract(s), and/or purchase order(s) that has been pledged as collateral to a STLP loan and perfected through an assignment form executed by all appropriate parties.

*Borrower* is the obligor of a DOT OSDBU guaranteed loan.

*Cooperative agreement* is the written agreement between DOT OSDBU and a Participating Lender that outlines the terms and conditions under which the lender may submit eligible loan requests to DOT OSDBU for consideration of its loan guarantee. The cooperative agreement further outlines the responsibilities and requirements of the lender in order to participate in the STLP.

*Director* means Director, Office of Small and Disadvantaged Business Utilization, U.S. Department of Transportation.

*Disadvantaged business enterprise or DBE* means a business that is certified as such by a recipient of DOT financial assistance as provided in 49 CFR part 23 or 49 CFR part 26.

*Guarantee agreement* means DOT OSDBU's written agreement with a Participating Lender that provides the terms and conditions under which DOT OSDBU will guarantee a STLP loan. It is not a contract to make a direct loan to the borrower.

*Loan guarantee* means the agreement of DOT OSDBU to issue a guarantee of payment of a specified portion of an approved STLP loan to the Participating Lender, under DOT OSDBU stated terms

and conditions, in the event that the borrower defaults on the loan.

*Loan purpose* means the approved uses for STLP loan proceeds. That is, only for short-term working capital needs related to the direct costs of an eligible transportation-related contract.

*Other eligible certifications* mean the following certifications obtained by a borrower through the U.S. Small Business Administration (SBA): Small Disadvantaged Business (SDB); Section 8(a) Program participant; HUBZONE Empowerment Contracting Program; and Service-Disabled Veteran Program (SDV).

*Participating Lender* (PL) is a bank or other lending institution that has agreed to the terms of a cooperative agreement and has been formally accepted into the STLP by DOT OSDBU.

*Small and disadvantaged business (SDB)* includes 8(a); small disadvantaged business; women-owned business, HubZone, and service-disabled veteran-owned business.

*Socially and economically disadvantaged individual* has the same meaning as stated in 49 CFR 26.5.

*Technical assistance* means service provided by the Participating Lender to the DBE or SDB that will enable the DBE or SDB to become more capable of managing its transportation-related contracts. Technical assistance can be provided by collaborating with agencies that offer small business management counseling such as the SBA, the U. S. Department of Commerce's Minority Business Development Centers (MBDCs), the Service Corps of Retired Executives (SCORE), Procurement Technical Assistance Centers (PTACs), and Small Business Development Centers (SBDCs).

*Transportation-related contract* means a contract, subcontract, or purchase order, at any tier, for the maintenance, rehabilitation, restructuring, improvement, or revitalization of any of the nation's modes of transportation that receive DOT funding.

*Work-out* means a plan that offers options to avoid loan default or collateral foreclosure and/or liquidation that is intended to resolve delinquent loans or loans in imminent default, which may include, but not limited to: deferring or forgiving principal or interest, reducing the borrower's interest rate, extending the loan maturity and the government guarantee to the Participating Lender, or postponing collection action.

## Subpart B—Policies Applying to STLP Loans

### § 22.11 Eligibility Criteria.

(a) *Eligible Borrower.* To be eligible to apply for a STLP loan guarantee, a borrower must meet the following requirements:

- (1) Be a for-profit entity;
- (2) Have an eligible transportation-related contract;
- (3) Demonstrate an eligible use for the desired credit;
- (4) Be an established business with experience in the transportation industry and trade for which the STLP loan is sought;
- (5) Be certified as a DBE or have another eligible certification issued by the SBA; and
- (6) Be current on all federal, state, and local tax liabilities.

(b) *Eligible Transportation-Related Contract.* Any fully-executed transportation-related contract, subcontract, or purchase order held directly with DOT or with grantees and recipients receiving federal funding from DOT for the maintenance, rehabilitation, restructuring, improvement or revitalization of any of the nation's modes of transportation shall be considered an eligible contract.

(c) *Eligibility Period.* A borrower is eligible for participation in the STLP for a period up to a total of five (5) years. The STLP renewal is not automatic. The borrower has to demonstrate its continued eligibility and creditworthiness for STLP and must submit a complete application package.

(1) The continued eligibility of any borrower who would exceed the period limit in paragraph (c) of this section will be determined on a case-by-case basis by the OSDBU Director and is subject to the following provisions:

- (i) The STLP loan guarantee may be reduced; and
- (ii) The STLP loan interest rate may be increased.

(2) Should any borrower currently in the STLP become ineligible per paragraph (a) of this section during the term of a STLP loan, the failure to comply with a specific requirement must be brought to the immediate attention of all remaining parties.

(3) Borrower ineligibility may result in a termination of the current guarantee.

### § 22.13 Loan Terms and Conditions.

(a) *Amount.* The maximum face amount for an individual STLP loan may not exceed seven hundred and fifty thousand (\$750,000) dollars, unless the requested increased amount is authorized by the OSDBU Director.

(b) *Interest Rates.* All STLP loans shall have a variable interest rate.

(1) *Initial Interest Rate.* The base rate guideline for STLP loans is the prime rate in effect on the first business day of the month in which the STLP loan guarantee is approved by DOT OSDBU. The prime rate is the rate printed in a national financial newspaper published each business day. The Participating Lender may increase the base rate by the maximum allowable percentage points currently allowed by STLP policies and procedures and as communicated in subsequent DOT OSDBU notices.

(2) *Frequency of Change.* The first change may occur on the first calendar day of the month following the initial loan disbursement, using the above base rate in effect on the first business day of the month. Subsequent interest rate changes may occur no more than monthly.

(c) *Loan Structure and Term.* A STLP loan shall be set up as a revolving line of credit. The line permits the borrower to request principal advances, pay them back, and then re-borrow, not to exceed the face value of the line of credit. Participating Lenders are required to provide DOT OSDBU written notification of the activation date of each line of credit under the STLP. The term of the Federal guarantee of the line of credit commences on the activation date.

(d) *Repayment.* Interest payments must be made monthly. The principal of the loan is repaid as payment from approved accounts receivable are received by the Participating Lender through a joint payee check system. The assigned contract supporting the STLP loan is the primary source of repayment.

(e) *Use of Loan Proceeds.* STLP loans must be used to finance short-term working capital needs, specifically direct costs generated by the assigned contract. Proceeds may not be used for the following purposes:

- (1) For long term working capital;
- (2) To repay delinquent State or Federal withholding taxes, local taxes, sales taxes or similar funds that should be held in trust or escrow; and/or
- (3) To provide funds for the distribution or payment to the owners, partners or shareholders of the business; and/or
- (4) To retire short or long-term debt.

(f) Non-compliance by the DBE in using the STLP loan for purposes not consistent with these regulations will result in a non-renewal of the STLP loan and in forfeiture of the STLP loan guarantee to the PL on any ineligible principal advances requested by the borrower and made by the PL.

(g) *Disbursements.* STLP funds may only be released to an eligible borrower upon the submission and verification of a valid written accounts receivable invoice, showing labor and/or materials amounts due for completed work on the contract. The Participating Lender must verify the accuracy of the invoice with the paying transportation government agency, if the borrower is a prime contractor, and/or with the prime contractor, if the borrower is a subcontractor. This verification must be obtained by the Participating Lender prior to advancing funds. No more than 85% of an approved accounts receivable invoice shall be advanced to the borrower by the Participating Lender.

(1) Processing time. Disbursement of STLP funds to the borrower should be accomplished within three (3) business days of an accounts receivable invoice approval by the paying agency and/or prime contractor.

(2) Electronic funds transfer. If the disbursement of STLP funds is being sent to the borrower through a local Participating Lender, the disbursement should be made by electronic funds transfer with the preferred method of payment being the Automated Clearing House (ACH) system.

(3) Wire transfers. Wire transfers can be used if the ACH system is not available or if a same day disbursement is required.

(4) Joint payee check system. A two-party payee check system is required in which the Participating Lender and the borrower will be the co-payees of any checks paid to the borrower for performance under the assigned contract. Alternative payment methods must have prior written approval by DOT OSDBU.

(h) *Personal Guarantees.* Individuals who own at least a 20% ownership interest in the borrower shall personally guarantee the STLP loan. DOT OSDBU, in its discretion and in consulting with the Participating Lender, may require other appropriate guarantees for the loan as well.

(i) *Collateral.* All advances under the STLP loan must be secured, at a minimum, by the assignment of the proceeds due under the transportation-related contract(s) being funded with loan proceeds (the Assigned Contract). The Participating Lender must have first lien position on the Accounts Receivable generated by the Assigned Contract. The Participating Lender and/or DOT OSDBU may request additional collateral on any loan request or loan guarantee request in order to mitigate the credit risk and reduce potential defaults and loan losses.



(j) *Key Person Life Insurance*. The assignment of existing life insurance policies of personal guarantors or other individuals critical to the borrower's operations may be required by the Participating Lender and/or DOT OSDBU in certain instances; and it is encouraged for those business applicants that do not have a management succession plan clearly in place or where a personal guarantee provides nominal financial strength to the credit.

#### **§ 22.15 Delinquency on Federal, State, or Municipality Debt.**

(a) The borrower must not be delinquent on any Federal, State, or municipality debt, including tax debts. Further, none of the principals and/or owners of the borrower can be delinquent on any Federal, State, or municipality debt, including personal tax debt. The borrower must acknowledge its status in writing as part of any STLP loan guarantee application. Participating Lenders and the DOT OSDBU must verify the borrower's status through the use of business and personal credit reports, as well as other appropriate Federal and State databases.

(b) If any delinquencies are determined during the application process, consideration of the request must be suspended until the delinquency is satisfactorily resolved, as determined and approved by the Director. If the delinquency cannot be resolved within a reasonable amount of time, the loan request must be declined.

#### **§ 22.17 Compliance with Child Support Obligations.**

Any holder of 50% or more of the ownership interest in the recipient of a STLP Loan must certify that he or she is not more than 60 days delinquent on any obligation to pay child support arising under:

- (a) An administrative order;
- (b) A court order;
- (c) A repayment agreement between the holder and a custodial parent; or
- (d) A repayment agreement between the holder and a State agency providing child support enforcement services.

#### **§ 22.19 Credit Criteria.**

An applicant for a STLP loan must be creditworthy and demonstrate an ability to repay the loan as well as satisfactory handling of the repayment of past and current debts. The Participating Lender and DOT OSDBU shall consider:

- (a) Character, reputation, and credit history of the applicant, its principals and owners, and all other guarantors;
- (b) Experience and depth of key management in the industry;

- (c) Financial strength of the business;
- (d) Past earnings, projected earnings and cash flow, and work in progress;
- (e) Ability to repay the loan;
- (f) Sufficient equity to operate on a sound financial basis; and
- (g) Capacity to perform under the transportation-related contract(s).

### **Subpart C—Participating Lenders**

#### **§ 22.21 Participation Criteria.**

A lender who participates in the STLP must meet the following criteria:

(a) It must operate as a lending institution certified by the Federal Deposit Insurance Corporation (FDIC), Federal Reserve Board, Office of the Comptroller of the Currency, Office of Thrift Supervision, Community Development Corporation (CDC), or Community Development Financial Institution (CDFI), for at least five (5) years;

(b) It must demonstrate a philosophy and history of lending to small, disadvantaged and women-owned businesses in their communities. Information will be requested by the Director on the number of short-term loans made to companies listed in paragraph (a)(5) of § 22.11. The Participating Lender shall submit information showing its efforts in relationship to its overall portfolio;

(c) It must demonstrate experience in administering monitored lines of credit, such as construction loans, accounts receivable financing, and/or contract financing for at least two years. Such experience should be held by any Participating Lender representative managing, reviewing or authorizing STLP loan portfolios;

(d) It must have at least two (2) years experience with other federal government lending programs such as U.S. Small Business Administration (SBA), Agriculture Rural Development, Bureau of Indian Affairs (BIA), Economic Development Administration (EDA), Department of Housing and Urban Development (HUD), Export Import Bank of the United States and/or state loan programs.

(e) It must have at least a satisfactory or better Community Reinvestment Act (CRA) rating;

(f) It must designate a Participating Lender representative to effectively administer the STLP loan portfolio;

(g) It must have the ability to evaluate, process, close, disburse, service and liquidate STLP loans;

(h) It must demonstrate the ability to implement, monitor and manage a two-party payee check system, in which the Participating Lender and borrower are joint payees of any checks paid to the

borrower for performance under the assigned contract(s);

(i) It must not currently be debarred or suspended from participation in a government contract or delinquent on a government debt. The Participating lender must submit a current form DOT F 2309–1 Certification Regarding Debarment, Suspension. The certification form is available at [http://www.osdbu.dot.gov/financial/docs/Cert\\_Debarment\\_DOT\\_F\\_2309-1.pdf](http://www.osdbu.dot.gov/financial/docs/Cert_Debarment_DOT_F_2309-1.pdf).

(j) It must be a drug-free workplace. The Participating Lender must execute current form DOT F 2307–1 Drug-Free Workplace Act Certification For A Grantee Other Than An Individual. The certification form is available at [http://www.osdbu.dot.gov/financial/docs/Cert\\_Drug-Free\\_DOT\\_F\\_2307-1.pdf](http://www.osdbu.dot.gov/financial/docs/Cert_Drug-Free_DOT_F_2307-1.pdf);

and

(k) It must certify that no Federal funds will be utilized for lobbying by executing a current form DOT F 2308–1 Certificate Regarding Lobbying For Contracts, Grants, Loans, and Cooperative Agreements in compliance with section 1352, title 21, of the U.S. Code. The certification form is available at [http://www.osdbu.dot.gov/financial/docs/Cert\\_Lobbying\\_DOT\\_F\\_2308-1.pdf](http://www.osdbu.dot.gov/financial/docs/Cert_Lobbying_DOT_F_2308-1.pdf).

#### **§ 22.23 Agreements.**

(a) DOT OSDBU may enter into a cooperative agreement with a lender that meets the criteria defined in § 22.21 in order for the lender to become a Participating Lender in the STLP. Such an agreement does not obligate DOT OSDBU to participate in any specific proposed loan that a lender may submit. The existence of a cooperative agreement does not limit the rights of DOT OSDBU to deny a specific loan or establish general policies. The current cooperative agreement is available at [http://www.osdbu.dot.gov/financial/docs/Coop\\_Agreement.pdf](http://www.osdbu.dot.gov/financial/docs/Coop_Agreement.pdf).

(b) The cooperative agreement is generally for a minimum period of twenty-four (24) months. DOT OSDBU will consider the cooperative agreement for renewal at the end of the designated term. If a cooperative agreement has expired, no further applications for the STLP shall be submitted to DOT OSDBU by the Participating Lender until a new cooperative agreement is executed by both parties.

(c) Unless instructed otherwise by DOT OSDBU, after the expiration of the cooperative agreement, the Participating Lender will complete the documentation of any loans which have been given final DOT OSDBU approval prior to expiration of the cooperative agreement.

(d) Following the expiration of the cooperative agreement, the Participating



Lender may, subject to the written concurrence of DOT OSDBU, sell its STLP loans to another bank or to another Participating Lender that assumes the original rights and responsibilities to fund, service and collect the loan or loans.

**§ 22.25 Lender Deliverables and Delivery Schedule.**

All Participating Lenders must adhere to certain required periodic reports, submissions, and other actions that are outlined in the cooperative agreement and the loan guarantee agreements, as well as to the required due dates to DOT OSDBU.

**§ 22.27 Eligible Reimbursements to Participating Lenders.**

Participating Lenders will be reimbursed by DOT OSDBU for reasonable expenses and costs that are incurred in the processing, administration, and monitoring of a STLP loan. The Participating Lender will be reimbursed as follows:

(a) *Processing/Underwriting Fee.* A fee, as specified in the cooperative agreement will be reimbursed by DOT OSDBU, with a minimum fee of not less than one thousand (\$1,000), per approved STLP loan guarantee, provided that DOT OSDBU receives proper notification of the activation date of the STLP loan.

(b) *Additional Administrative Fee:* For total loan amounts of \$150,000.00 or less, the Participating Lender can request an additional one-half (1/2) percent administrative fee for the increased loan monitoring and administrative assistance required to process the loan. The request must be supported with the information specified in the cooperative agreement.

(c) *Travel Expenses.* For any pre-approved travel expenses, the Participating Lender will be reimbursed for certain costs, provided that paragraphs (c)(1) and (2) of this section are met:

(1) A written request for travel, along with a statement of the purpose of the travel and proposed cost estimate, is submitted for DOT OSDBU for its approval no less than ten (10) business days prior to travel; and

(2) A travel invoice accompanied by a written report explaining the findings of the travel is submitted to DOT OSDBU no later than thirty (30) days following the approved travel. Payment or reimbursement for travel shall be in accordance with the Joint Travel Regulations, Federal Travel Regulations and DOD FAR 31.205.46.

(d) *Attorney Fees.* Legal fees incurred by the PL may be eligible for

reimbursement. Prior written approval from DOT OSDBU is required. Attorney fees will be reimbursed on a pro-rata basis in proportion to the percentage of the government loan guarantee in relation to the total loan amount.

**§ 22.29 DOT Access to Participating Lenders Files.**

A Participating Lender must allow the authorized representatives of DOT OSDBU, as well as representatives of the Office of Inspector General (OIG) and General Accountability Office (GAO), access to its STLP loan files to review, inspect, and copy all records and documents pertaining to DOT OSDBU guaranteed loans. Record retention of all relevant documents and other materials is specified in the cooperative agreement between DOT OSDBU and the Participating Lender.

**§ 22.31 Suspension or Revocation of Eligibility to Participate.**

(a) DOT OSDBU may suspend or revoke the eligibility of a Participating Lender to participate in the STLP by giving written notice in accordance with the terms and conditions cited in the cooperative agreement. Such notice may be given because of a violation of DOT OSDBU regulations; a breach of any agreement with DOT OSDBU; a change of circumstance resulting in the Participating Lender's inability to meet operational requirements; or a failure to engage in prudent lending practices. A suspension or revocation will not invalidate a loan guarantee previously approved by DOT OSDBU, providing that the specific loan was handled in accordance with its guarantee agreement, the cooperative agreement and/or these regulations.

(b) The written notice to suspend or revoke participation in the STLP will specify the corrective actions that the Participating Lender must take, as well as the time period allowed for cure, prior to DOT OSDBU considering a termination of the cooperative agreement.

**§ 22.33 Termination of Participation in the STLP.**

(a) *DOT OSDBU Termination for Convenience.* DOT OSDBU may terminate a cooperative agreement for the convenience of the government, and without cause, upon prior written notice of thirty (30) days of its intent to terminate. Upon termination, DOT OSDBU shall remain liable on the pro-rata share of the loan guarantee(s) received by the PL which received the Director's final approval, prior to the effective date of termination.

(b) *Participating Lender's Termination.* The Participating Lender

may terminate a cooperative agreement with written notice of sixty (60) days to DOT OSDBU of its intent to terminate. Upon termination, DOT OSDBU shall remain liable on the pro-rata share of the loan guarantee(s) received by the Participating Lender which received the Director's final approval, prior to the effective date of termination of the cooperative agreement.

(c) *DOT OSDBU Termination for Cause.* DOT OSDBU may terminate a cooperative agreement, in whole or in part, at any time before the expiration of the term of the cooperative agreement or the expiration of any renewal term of the cooperative agreement, and without allowing any cure period as described in this section, if it determines that the Participating Lender failed to comply with any terms and conditions of its cooperative agreement and such failure cannot be reasonably addressed. DOT OSDBU shall promptly notify the Participating Lender in writing of this determination and the reasons for the termination, together with the effective date of termination.

(d) DOT OSDBU may also terminate for cause any cooperative agreement with a Participating Lender that fails to comply with the corrective actions requested in a written notice of suspension or revocation within the specified cure period, in accordance with the terms and conditions further described in the cooperative agreement.

**Subpart D—Loan Application Process**

**§ 22.41 Application Procedures.**

(a) A STLP loan guarantee request application package shall consist of the DOT OSDBU Application for Loan Guarantee and supporting documentation as outlined below at paragraph (b) of this section. The application may be obtained directly from the office of DOT OSDBU, from a current Participating Lender, or online from the agency's Web site, currently at <http://osdbu.dot.gov/documents/pdf/stlp/stlpapp.pdf>.

(b) Supporting documentation may include, but is not limited to, the following items: Business, trade or job performance reference letters; current DBE or SDB eligibility certification letters and/or affidavit; signed and dated borrower certification that all federal, state and local taxes are current; business tax returns; business financial statements; personal income tax returns; personal financial statements; schedule of work in progress; signed and dated copy of transportation-related contracts; business debt schedule; income and cash flow projections; and evidence of bonding and insurance. It also includes,

from the Participating Lender, the lender's internal credit approval memo and analysis and other third-party credit verifications obtained.

(c) Application packages are submitted directly to a Participating Lender, which will perform its own credit review. The Participating Lender must initially approve or decline the loan based upon its internal analysis of the request. Loans approved by the Participating Lender are then forwarded to DOT OSDBU for its STLP eligibility review, independent credit review, and for presentation to the DOT OSDBU Loan Committee. All loan approvals shall require the final approval of the Director, or the Director's designee, for the issuance of a Government Loan Guarantee.

#### **§ 22.43 Approval or Denial.**

If a loan guarantee is approved by DOT OSDBU, a Guarantee Agreement, form DOT F 2314-1, will be issued to the Participating Lender. If a loan guarantee is declined by the Participating Lender, the Participating Lender is responsible for communicating the reasons for the decline to the applicant. The Participating Lender must notify the applicant, in writing, of the reasons for the decline; and a copy of this notification must be sent to DOT OSDBU. If a loan guarantee is declined by the DOT OSDBU, DOT OSDBU will be responsible for communicating the reasons for the decline to the applicant. The form is available at [http://www.osdbu.dot.gov/financial/docs/Loan\\_Guarantee\\_DOT\\_F\\_2314-1.pdf](http://www.osdbu.dot.gov/financial/docs/Loan_Guarantee_DOT_F_2314-1.pdf).

#### **§ 22.45 Allowable Fees to Borrowers.**

(a) *Application Fees.* The Participating Lender may charge the applicant a non-refundable loan application fee, as determined from time to time by DOT OSDBU, for each STLP loan application processed, whether a new loan request or a renewal request.

(b) *Reasonable Closing Expenses.* Provided the Participating Lender charges similar fees to its non-STLP borrowers, the Participating Lender may collect reasonable closing expenses from the borrower, provided that full disclosure of such fees is made to the borrower prior to the loan closing date. These expenses include necessary out-of-pocket expenses to third parties such as filing and recordation fees, as well as loan closing document preparation fees.

### **Subpart E-Loan Administration**

#### **§ 22.51 Loan closings.**

(a) The Participating Lender must promptly close all STLP loans in

accordance with the terms and conditions approved by DOT OSDBU in its Guarantee Agreement. The Participating Lender must report circumstances concerning any STLP loans not closed within a reasonable time period after DOT OSDBU approval.

(b) The Participating Lender uses its own internal loan closing documents and must use standard banking practices and procedures to ensure proper execution of the debt and perfection of the collateral. The Participating Lender must forward copies of all executed closing documents and filings to DOT OSDBU within the time period specified in the cooperative agreement.

#### **§ 22.53 Loan Monitoring and Servicing Requirements.**

The Participating Lender must review STLP principal advance requests, process loan disbursements, and payments, and maintain contact with the borrower during the term of the loan. The Participating Lender must monitor the progress of the project being financed and the borrower's continued compliance with the terms and conditions of the loan. The Participating Lender must promptly report any material adverse change in the financial condition or business operations of the borrower to DOT OSDBU.

#### **§ 22.57 Loan Reporting Requirements.**

The STLP is subject to the requirements of the Federal Credit Reform Act of 1990 (FCRA) that includes certain budgeting and accounting requirements for Federal credit programs. To fulfill the requirements of FCRA, the Participating Lender must provide DOT OSDBU prompt written notification of the activation date by the time period specified in the cooperative agreement. The Participating Lender must submit to OSDBU a form DOT F 2303-1 Bank Verification Loan Activation Form that indicates the date in which the loan has been activated/funded. The form is available at [http://www.osdbu.dot.gov/financial/docs/Loan\\_Activation\\_DOT\\_F\\_2303-1.pdf](http://www.osdbu.dot.gov/financial/docs/Loan_Activation_DOT_F_2303-1.pdf). The Participating Lender must also provide DOT OSDBU prompt written notification of the date the loan is repaid and closed. The Participating Lender must submit to OSDBU a form DOT F 2304-1 Bank Acknowledgement Loan Close-Out Form upon full repayment of the STLP loan, or upon expiration of the loan guarantee. The form is available at [http://www.osdbu.dot.gov/financial/docs/Loan\\_Close-Out\\_DOT\\_F\\_2304-1.pdf](http://www.osdbu.dot.gov/financial/docs/Loan_Close-Out_DOT_F_2304-1.pdf). To fulfill this requirement, the Participating

Lender must also submit a monthly report to the DOT OSDBU detailing the previous month's activity for their STLP loans. The Participating Lender must submit form DOT F 2306-1 Pending Loan Status Report and form DOT F 2305-1 Guaranty Loan Status Report. These forms are available at [http://www.osdbu.dot.gov/financial/docs/Pending\\_Loan\\_DOT\\_F\\_2306-1.xls](http://www.osdbu.dot.gov/financial/docs/Pending_Loan_DOT_F_2306-1.xls) and [http://www.osdbu.dot.gov/financial/docs/Guaranty\\_Loan\\_DOT\\_F\\_2305-1.xls](http://www.osdbu.dot.gov/financial/docs/Guaranty_Loan_DOT_F_2305-1.xls) respectively.

#### **§ 22.59 Loan Modifications.**

Any modification to the terms of the DOT OSDBU guarantee agreement must have prior written approval of the Director, and executed in writing as an Addendum to the original guarantee agreement.

#### **§ 22.61 Loan Guarantee Extensions.**

An extension of the original loan guarantee may be requested, in writing, by the Participating Lender. The Participating lender must submit to OSDBU a form DOT F 2310-1 to request an extension of the original loan guarantee for a maximum period of ninety (90) days. The form is available at [http://www.osdbu.dot.gov/financial/docs/Loan\\_Extension\\_DOT\\_F\\_2310-1.pdf](http://www.osdbu.dot.gov/financial/docs/Loan_Extension_DOT_F_2310-1.pdf). The request must comply with the terms and conditions described in the guarantee agreement and with the STLP policies and procedures. All extension requests must be approved by the Director.

#### **§ 22.63 Loan Close Outs.**

Upon full repayment of the STLP loan, or upon expiration of the loan guarantee, the Participating Lender must submit to OSDBU a form DOT F 2304-1 Bank Acknowledgement Loan Close-Out Form. The form is available at [http://www.osdbu.dot.gov/financial/docs/Loan\\_Close-Out\\_DOT\\_F\\_2304-1.pdf](http://www.osdbu.dot.gov/financial/docs/Loan_Close-Out_DOT_F_2304-1.pdf).

#### **§ 22.65 Subordination.**

DOT OSDBU must not be placed in a subordinate position to any other debt.

#### **§ 22.67 Delinquent Loans and Loan Defaults.**

(a) The Participating Lender must bring to the immediate attention of the Director any delinquent STLP loans. The Participating Lender and DOT OSDBU are jointly responsible for establishing collection procedures and must exercise due diligence with respect to collection of delinquent debt. The Participating Lender is responsible for initiating actions to recover such debt. DOT OSDBU must approve any compromise of a claim, resolution of a dispute, suspension or termination of

collection action, or referral for litigation. A work-out solution will only be considered if it is expected to minimize the cost to the federal government in resolving repayment delinquencies and/or loan default. They must only be used when the borrower is likely to be able to repay the loan under the terms of the work-out, and if the cost of establishing the work-out plan is less than the costs of loan default and/or foreclosure.

(b) In an appropriate situation, DOT OSDBU may authorize the Participating Lender to undertake legal action deemed necessary to collect delinquent loans and DOT will reimburse the

Participating Lender on a pro rata basis in proportion to the loan guarantee percentage for the associated fees and costs, with prior authorization from the Director. Penalties and late fees are not eligible for reimbursement. Any legal action undertaken by the Participating Lender without OSDBU authorization will not be eligible for a pro rata basis reimbursement of the associated fees and costs. Net recoveries applicable to accrued interest must be applied on a pro rata basis in proportion to the formula used during the term of the loan.

#### **§ 22.69 Claim Process.**

After reasonable efforts have been exhausted to collect on a delinquent debt, the Participating Lender may demand in writing that DOT OSDBU honor its loan guarantee, provided however that the maximum liability of DOT OSDBU shall not at any time exceed the guaranteed amount. The borrower must be in default for no less than thirty (30) days, and the Participating Lender must have made written demand for payment from the borrower, in accordance with the guarantee agreement.

[FR Doc. 2010-7622 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-9X-P**

# Proposed Rules

Federal Register

Vol. 75, No. 71

Wednesday, April 14, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF ENERGY

### 10 CFR Part 430

[Docket Number: EE-2009-BT-STD-0020; EE-2009-BT-STD-0022]

RIN 1904-AB89; 1904-AC06

### Energy Conservation Program: Test Procedures and Energy Conservation Standards for Residential Furnaces and Boilers

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Proposed rule; extension of public comment period.

**SUMMARY:** This document announces an extension of the time periods for submitting comments on the supplemental notice of proposed rulemaking (SNOPR) to amend the test procedures for furnaces and boilers, and the energy conservation standards notice of public meeting (NOPM) and availability of a rulemaking analysis plan (RAP) for furnaces. Both comment periods are extended to April 27, 2010.

**DATES:** The comment period for the proposed rules published on March 15, 2010 (75 FR 12144) and April 5, 2010 (75 FR 17075) is extended to April 27, 2010.

**ADDRESSES:** Any comments submitted must identify the "SNOPR on Test Procedures for Residential Furnaces and Boilers" or "NOPM for Energy Conservation Standards for Residential Furnaces" and provide the appropriate docket number EE-2009-BT-STD-0020 (SNOPR) or EE-2009-BT-STD-0022 (NOPM) and/or RIN number 1904-AB89 (SNOPR) or 1904-AC06 (NOPM). Comments may be submitted using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* [RFB-2008-TP-0020@ee.doe.gov](mailto:RFB-2008-TP-0020@ee.doe.gov) (SNOPR) or [Res-Furnaces-2009-STD-0022@ee.doe.gov](mailto:Res-Furnaces-2009-STD-0022@ee.doe.gov) (NOPM). Include docket number EE-2009-BT-STD-0020 or EE-2009-BT-

STD-0022 and/or RIN 1904-AB89 or 1904-AC06, as appropriate, in the subject line of the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format and avoid the use of special characters or any form of encryption.

- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-2945. Please submit one signed original paper copy.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024. Please submit one signed original paper copy.

*Docket:* For access to the docket to read background documents or comments received, visit the U.S. Department of Energy, Resource Room of the Building Technologies Program, 950 L'Enfant Plaza, SW., 6th Floor, Washington, DC 20024, (202) 586-2945, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mohammed Khan, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-7892. E-mail: [Mohammed.Khan@ee.doe.gov](mailto:Mohammed.Khan@ee.doe.gov).

Mr. Eric Stas, U.S. Department of Energy, Office of the General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone: (202) 586-9507. E-mail: [Eric.Stas@hq.doe.gov](mailto:Eric.Stas@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:** On March 15, 2010, the U.S. Department of Energy (DOE) published a **Federal Register** notice announcing the availability of its RAP for energy conservation standards for residential furnaces, as well as a public meeting to discuss and receive comment on the RAP. 75 FR 12144. The NOPM provides for the submission of comments by April 14, 2010, and comments were also accepted at a public meeting held on March 31, 2010. On April 5, 2010, DOE published a SNOPR setting forth an integrated

efficiency descriptor that incorporates standby mode and off mode energy consumption into the statutorily identified efficiency descriptor, Annual Fuel Utilization Efficiency (AFUE). 75 FR 17075. The SNOPR provides for the submission of comments by April 20, 2010. At the public meeting to discuss the RAP, several commenters asked for an extension of the comment period to consider these new amendments to the AFUE metric because DOE had previously stated in the NOPR that DOE was not proposing to integrate standby and off mode electrical energy use into AFUE, the energy descriptor specified in EPCA (42 U.S.C. 6291(22)). Commenters pointed out that the magnitude of the standby and off mode electrical consumption was small as compared to the fossil fuel energy consumption currently characterized by the AFUE metric. The commenters requested additional time to review the relevant statutory provisions within EPCA and to consider the impacts that integration of standby and off mode electric energy use into the AFUE metric may have on existing products, testing, energy efficiencies, and reporting. DOE has determined that an extension of the public comment period is appropriate based on the foregoing reasons and is hereby extending the comment period. DOE will consider any comments received by April 27, 2010, and deems any comments received between publications of the SNOPR and notice announcing availability of the RAP, respectively, and April 27, 2010 to be timely submitted.

Issued in Washington, DC, on April 8, 2010.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2010-8508 Filed 4-13-10; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY****10 CFR Part 431****[Docket No. EERE-2008-BT-STD-0015]****RIN 1904-AB86****Energy Conservation Program: Public Meeting and Availability of the Preliminary Technical Support Document for Walk-In Coolers and Walk-In Freezers; Correction and Date Change**

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Date changes and corrections.

**SUMMARY:** The U. S. Department of Energy (DOE) published a document in the **Federal Register** on April 5, 2010, concerning a public meeting and availability of the preliminary technical support document regarding energy conservation standards for walk-in coolers and walk-in freezers. This document corrects the docket number in that document and corrects the rulemaking e-mail address. This document also changes the dates of the public meeting, the deadline for requesting to speak at the public meeting, and the deadline for submitting written comments on the preliminary analysis.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Llenza, U.S. Department of Energy, Building Technologies Program, EE-2J, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-2192, [Charles.Llenza@ee.doe.gov](mailto:Charles.Llenza@ee.doe.gov) or Mr. Michael Kido, Esq., U.S. Department of Energy, Office of General Counsel, GC-71, 1000 Independence Avenue, SW., Washington, DC 20585-0121, (202) 586-8145, [Michael.Kido@hq.doe.gov](mailto:Michael.Kido@hq.doe.gov).

**DATES:** DOE will hold a public meeting in Washington, DC on Wednesday, May 19, 2010, beginning at 9 a.m. DOE must receive requests to speak at the meeting before 4 p.m., Wednesday, May 5, 2010. DOE must receive a signed original and an electronic copy of statements to be given at the public meeting before 4 p.m., Wednesday, May 12, 2010. Written comments are welcome, especially following the public meeting, and should be submitted by Friday, May 28, 2010.

**ADDRESSES:** The public meeting will be held at the U.S. Department of Energy, Forrestal Building, Room 8E-089, 1000 Independence Avenue, SW., Washington, DC 20585-0121. To attend the public meeting, please notify Ms. Brenda Edwards at (202) 586-2945.

Please note that foreign nationals participating in the public meeting are subject to advance security screening procedures, requiring a 30-day advance notice. If you are a foreign national and wish to participate in the public meeting, please inform DOE as soon as possible by contacting Ms. Brenda Edwards at (202) 586-2945 so that the necessary procedures can be completed. Interested persons may submit comments, identified by docket number EERE-2008-BT-STD-0015, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov> Follow the instructions for submitting comments.

- *E-mail:* [WICF-2008-STD-0015@ee.doe.gov](mailto:WICF-2008-STD-0015@ee.doe.gov); Include EERE-2008-BT-STD-0015 in the subject line of the message.

- *Postal Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE-2J, Public Meeting for Walk-in Coolers and Walk-in Freezers, EERE-2008-BT-STD-0015, 1000 Independence Avenue, SW., Washington, DC 20585-0121. Telephone (202) 586-2945. Please submit one signed paper original.

- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone (202) 586-2945. Please submit one signed paper original.

**Instructions:** All submissions received must include the agency name and docket number.

**Docket:** For access to the docket to read background documents or a copy of the transcript of the public meeting or comments received, go to the U.S. Department of Energy, Sixth Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, (202) 586-2945, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at (202) 586-2945 for additional information regarding visiting the Resource Room.

**SUPPLEMENTARY INFORMATION:** DOE published a notice in the **Federal Register** on April 5, 2010, (75 FR 17080) concerning a public meeting and availability of the preliminary technical support document regarding energy conservation standards for walk-in coolers and walk-in freezers. This notice corrects the docket number in that notice to EERE-2008-BT-STD-0015 and corrects the rulemaking e-mail address in that notice to [WICF-2008-STD-0015@ee.doe.gov](mailto:WICF-2008-STD-0015@ee.doe.gov).

This notice also changes the date of the public meeting, the date of the deadline for requesting to speak at the

public meeting, and the date of the deadline for submitting written comments on the preliminary analysis. The public meeting will now be held on Wednesday, May 19, 2010, beginning at 9 a.m. The close of the comment period has been changed to Friday, May 28, 2010, in order to accommodate comments received at the public meeting and comments that may be submitted based on issues raised at the public meeting. Interested parties are directed to submit their comments to the rulemaking e-mail address, [WICF-2008-STD-0015@ee.doe.gov](mailto:WICF-2008-STD-0015@ee.doe.gov), with instructions to include docket number EERE-2008-BT-STD-0015.

The purpose of the meeting is to discuss the preliminary analysis for standards for walk-in coolers and walk-in freezers. The Department welcomes all interested parties, regardless of whether they participate in the public meeting, to submit written comments regarding matters addressed in the preliminary analysis, as well as any other related issues, by May 28, 2010.

Issued in Washington, DC, on April 8, 2010.

**Cathy Zoi,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 2010-8499 Filed 4-13-10; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 54****DEPARTMENT OF LABOR****Employee Benefits Security Administration****29 CFR Part 2590****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Office of the Secretary****45 CFR Parts 146 and 148****Medical Loss Ratios; Request for Comments Regarding Section 2718 of the Public Health Service Act**

**AGENCY:** Internal Revenue Service, Department of the Treasury; Employee Benefits Security Administration, Department of Labor; Office of the Secretary, Department of Health and Human Services.

**ACTION:** Request for information.

**SUMMARY:** This document is a request for comments regarding Section 2718 of the Public Health Service Act (PHS Act), which was added by Sections 1001 and 10101 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148, enacted on March 23, 2010. Section 2718 of the PHS Act, among other provisions, requires health insurance issuers offering individual or group coverage to submit annual reports to the Secretary on the percentages of premiums that the coverage spends on reimbursement for clinical services and activities that improve health care quality, and to provide rebates to enrollees if this spending does not meet minimum standards for a given plan year. Section 1562 of PPACA also added section 715 of the Employee Retirement Income Security Act of 1974 (ERISA) and section 9815 of the Internal Revenue Code of 1986 (the Code). These two sections effectively incorporate by reference section 2718 and other amendments to title XXVII of the PHS Act. The Departments of Health and Human Services (HHS), Labor, and the Treasury (collectively, the Departments) invite public comments in advance of future rulemaking.

**DATES:** Submit written or electronic comments by May 14, 2010.

**ADDRESSES:** Written or electronic comments should be submitted to the Department of HHS as directed below. Any comment that is submitted to the Department of HHS will be shared with the Departments of Labor and Treasury.

All comments will be made available to the public. Please do not include any personally identifiable information (such as name, address, or other contact information) or confidential business information that you do not want publicly disclosed.

All comments are posted on the Internet exactly as received, and can be retrieved by most Internet search engines. No deletions, modifications, or redactions will be made to the comments received, as they are public records. Comments may be submitted anonymously.

Comments, identified by DHHS–2010–MLR, may be submitted to the Department of HHS by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Mail:* Written comments (one original and two copies) may be mailed to: Department of Health and Human Services, Attention: DHHS–2010–MLR, Hubert H. Humphrey Building, Room 445–G, 200 Independence Avenue, SW., Washington, DC 20201.

- *Hand or courier delivery:* Written comments (one original and two copies) may be delivered (by hand or courier) to Room 445–G, Department of Health and Human Services, Attention: DHHS–2010–MLR, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the DHHS–2010–MLR drop box located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.

*Inspection of Public Comments.* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on the following public Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at Room 445–G, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call 1–800–743–3951.

**FOR FURTHER INFORMATION CONTACT:**

Sharon Arnold, Centers for Medicare & Medicaid Services, Department of Health and Human Services, at (202) 690–5480; Amy Turner or Beth Baum, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335; Russ Weinheimer, Internal Revenue Service, Department of the Treasury, at (202) 622–6080.

*Customer Service Information:*

Individuals interested in obtaining information about the Patient Protection and Affordable Care Act may visit the Department of Health and Human Services' Web site (<http://www.healthreform.gov>). In addition, information concerning employment-based health coverage laws is available by calling the EBSA Toll-Free Hotline at 1–866–444–EBSA (3272) or visiting the

Department of Labor's Web site (<http://www.dol.gov/ebsa>).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. General*

Section 1001 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111–148, enacted on March 23, 2010, amended the Public Health Service Act (PHS Act) to provide several individual and group market reforms. In 1996, Congress enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which added title XXVII to the PHS Act, and parallel provisions to the Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code of 1986 (the Code). The HIPAA amendments provided for, among other things, improved portability and continuity of coverage with respect to health insurance coverage in the group and individual insurance markets, and group health plan coverage provided in connection with employment. Title XXVII of the PHS Act is codified at 42 U.S.C. 300gg, *et seq.* PPACA expanded Title XXVII of the PHS Act, redesignated several sections, and created new requirements affecting the individual and group markets. These amendments were incorporated by reference into ERISA and the Code by creating new sections 715 and 9815, respectively. The Secretaries of HHS, Labor, and the Treasury have shared interpretive and enforcement authority under Title XXVII of the PHS Act, Part 7 of ERISA, and Chapter 100 of the Code. See section 104 of HIPAA and Memorandum of Understanding applicable to Title XXVII of the PHS Act, Part 7 of ERISA, and Chapter 100 of the Code, published at 64 FR 70164, December 15, 1999.

*B. Public Reporting of the Ratio of Incurred Claims to Earned Premiums (Medical Loss Ratio) for Individual and Group Coverage*

PPACA sections 1001 and 10101 added Section 2718 of the PHS Act, which, among other provisions, requires health insurance issuers offering individual or group coverage to submit annual reports to the Secretary on the percentages of premiums that the coverage spends on reimbursement for clinical services and activities that improve health care quality, and to provide rebates to enrollees if this spending does not meet minimum standards for a given plan year.

Specifically, Section 2718(a) of the PHS Act requires health insurance issuers offering group or individual

coverage to submit a report to the Secretary for each plan year, concerning the ratio of the incurred loss (or incurred claims) plus the loss adjustment expense (or change in contract reserves) to earned premiums (also known as the medical loss ratio (MLR)). Section 2718(a) requires that each report include the percentage of total premium revenue—after accounting for collections or receipts for risk adjustment and risk corridors and payments of reinsurance—that the coverage spends:

- (1) On reimbursement for clinical services provided to enrollees;
- (2) for activities that improve health care quality; and
- (3) on all other non-claims costs, including an explanation of the nature of these costs, and excluding Federal and State taxes and licensing or regulatory fees.

Section 2718(a) also directs the Secretary to make these reports available to the public on the Internet Web site of HHS.

#### C. Uniform Definitions

Section 2718(c) of the PHS Act directs the National Association of Insurance Commissioners (NAIC) to establish uniform definitions of the activities being reported to the Secretary under Section 2718(a), and standardized methodologies for calculating measures of these activities no later than December 31, 2010. Section 2718(c) specifies that NAIC's responsibilities relating to this provision are to include defining which activities constitute activities that improve quality (under Section 2718(a)(2)). Section 2718(c) also directs that the uniform methodologies that NAIC develops are to be designed to take into account the special circumstances of smaller plans, different types of plans, and newer plans. Finally, Section 2718(c) specifies that the uniform definitions and standardized methodologies that NAIC develops are to be subject to the certification of the Secretary.

#### D. Payment of Rebates to Enrollees if the Amount Spent on Clinical Services and Quality Improvement Does Not Meet Minimum Standards

Section 2718(b)(1)(A) of the PHS Act provides that, beginning not later than January 1, 2011, health insurance issuers offering group or individual health insurance coverage must with respect to each plan year, provide an annual rebate to each enrollee under such coverage if the ratio of: (1) The amount of premium revenue the issuer spends on reimbursement for clinical

services provided to enrollees and activities that improve health care quality to (2) the total amount of premium revenue for the plan year (excluding Federal and State taxes and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance under sections 1341, 1342, and 1343 of PPACA) is less than the following percentages, referred to here as “the applicable minimum standards”:

- (1) 85 percent for coverage offered in the large group market (or a higher percentage that a given State may have determined by regulation); or
- (2) 80 percent for coverage offered in the small group market or in the individual market (or a higher percentage that a given State may have determined by regulation), except that the Secretary may adjust this percentage for a State if the Secretary determines that the application of the 80 percent minimum standard may destabilize the individual market in that State).

Section 2718(b)(2) requires that in determining these minimum percentages, States shall seek to ensure adequate participation by health insurance issuers, competition in the State's health insurance market, and value for consumers so that premiums are used for clinical services and quality improvements.

Additionally, Section 2718(d) provides that the Secretary may adjust the rates described in Section 2718(b) if the Secretary determines that it is appropriate to do so, on account of the volatility of the individual market due to the establishment of State Exchanges. (In this context, the terms “State Exchange” and “Exchange” refer to the State health insurance exchanges established under PPACA).

Section 2718(b)(1)(A) requires that the annual rebate be paid to each enrollee on a “pro rata basis”. Section 2718(b)(1)(B)(i) specifies that the total amount of the annual rebate required under this provision shall be equal to the product of:

- (1) The amount by which the applicable minimum standard exceeds the actual ratio of the issuer's expenditures to its premium revenue as described above; and
- (2) The total amount of the premium revenue described above.

Section 2718(b)(1)(B)(ii) requires that beginning on January 1, 2014, the determination of whether the percentage that the coverage spent on clinical services and quality improvement exceeds the applicable minimum standard (under Section 2718(b)(1)(A)) for the year involved shall be based on the average of the premiums expended

on these costs and total premium revenue for each of the previous three years for the plan.

#### E. Enforcement

Section 2718(b)(3) of the PHS Act requires the Secretary to promulgate regulations for enforcing the provisions of Section 2718, and specifies that the Secretary may provide for appropriate penalties.

#### F. Taxation of Certain Insurers

Section 9016 of the PPACA amends Section 833 of the Code to provide that Section 833 does not apply to any organization unless the organization's percentage of total premium revenue expended on reimbursement for clinical services (as reported under Section 2718 of the Public Health Service Act) is not less than 85 percent. In general, Section 833 provides a special deduction and a higher unearned premium reserve for certain Blue Cross or Blue Shield organizations that were in existence in 1986 and to other organizations that satisfy enumerated criteria. The amendment to Section 833 applies to taxable years beginning after December 31, 2009.

#### G. Effective Dates

Section 1004(a) of the PPACA provides that the provisions of Section 2718 of the PHS Act shall become effective for plan years beginning on or after the date that is 6 months after the date of enactment of PPACA. (The date of enactment of PPACA is March 23, 2010).

## II. Solicitation of Comments

The Departments are inviting public comment to aid in the development of regulations regarding Section 2718 of the PHS Act. The Departments are interested in comments from all interested parties and are especially interested in the perspectives of health insurance issuers and States. To assist interested parties in responding, this request for comments describes specific areas in which the Departments are particularly interested.

This request for comments identifies a wide range of issues that are of interest to the Departments. Commenters should use the questions below to assist in providing the Departments with useful information relating to the development of regulations regarding Section 2718 of the PHS Act. However, it is not necessary for commenters to address every question below and commenters may also address additional issues under Section 2718. Individuals, groups, and organizations interested in providing comments may do so at their

discretion by following the above mentioned instructions.

Specific Areas in Which the Departments Are Particularly Interested Include the Following:

#### *A. Actual MLR Experience and Minimum MLR Standards*

The PPACA sets an 85 percent minimum standard for the percentage of premiums that coverage in the large group market spends on reimbursement for clinical services and activities that improve quality, and an 80 percent minimum standard for the small group and individual markets—allowing for higher State-level standards where appropriate (if they are specified in regulations). The PPACA allows the Secretary to adjust this percentage for the individual market in a given State: (1) If the Secretary determines that application of the 80 percent standard may destabilize the individual market in that State, and/or (2) on account of the volatility of the individual market due to the establishment of State Exchanges.

1. How Do Health Insurance Issuers' Current Medical Loss Ratios for the Individual, Small Group, and Large Group Markets Compare to the Minimum Standards Required in PPACA?

a. What factors contribute to annual fluctuations in issuers' medical loss ratios?

b. To what extent do States have different minimum MLR requirements based on plan size, plan type, number of years of operation, or other factors?

2. What Criteria Do States and Other Entities Consider When Determining if a Given Minimum MLR Standard Would Potentially Destabilize the Individual Market? What Other Criteria Could Be Considered?

#### *B. Uniform Definitions and Calculation Methodologies*

The statute requires health insurance issuers offering group or individual health insurance coverage to annually submit to the Secretary a report concerning the ratio of the incurred loss (or incurred claims) plus the loss adjustment expense (or change in contract reserves) to earned premiums—including the percentage of premiums spent on reimbursement for clinical services provided to enrollees, activities that improve health care quality, and on all other non-claims costs. PPACA also directs NAIC to develop uniform definitions and methodologies for calculating these statistics (subject to certification by the Secretary).

1. What Definitions and Methodologies Do States and Other Entities Currently Require When Calculating MLR-Related Statistics?

a. What assumptions and methodologies do issuers use when calculating MLR-related statistics? What are some of the major differences that exist, as well as pros and cons of these various methods?

b. What kinds of assumptions and methodologies do issuers currently use for allocating administrative overhead by product, geographic area, etc.? What are the pros and cons of these various methods?

c. What kinds of assumptions and methodologies do issuers currently use when calculating the loss adjustment expense (or change in contract reserves)? What are the pros and cons of these various methods?

d. To what extent do States and other entities receive detailed information about the distribution of non-claims costs by function (for example, claims processing and marketing)? To what extent do they set standards as to which administrative overhead costs may be allocated to processing claims, or providing health improvements?

e. What kinds of criteria do States and other entities use in determining if a given company has credible experience for purposes of calculating MLR-related statistics?

f. What kinds of special considerations, definitions, and methodologies do States and other entities currently use relating to calculating MLR-related statistics for newer plans, smaller plans, different types of plans or coverage?

2. What Are the Similarities and Differences Between the Requirements in Section 2718 Compared to Current Practices in States?

a. What MLR-related data elements that are required by PPACA do issuers currently capture in their financial accounting systems, and how are they defined? What elements are likely to require systems changes in order to be captured?

b. What MLR-related data elements that are required by PPACA do States or other entities currently require issuers to submit, and how are they defined? What elements are not currently submitted?

3. What Definitions Currently Exist for Identifying and Defining Activities That Improve Health Care Quality?

a. What criteria do States and other entities currently use in identifying activities that improve health care quality?

b. What, if any, lists of activities that improve health care quality currently exist? What are the pros and cons associated with including various kinds of activities on these lists (for example disease management and case management)?

c. To what extent do current calculations of medical loss ratios include the amount spent on improving health care quality? Is there any data available relating to how much this amount is?

4. What Other Terms or Provisions Require Additional Clarification To Facilitate Implementation and Compliance? What Specific Clarifications Would Be Helpful?

#### *C. Level of Aggregation*

Depending on the context, insurance-related data may be aggregated at the policy form level, by plan type, by line of business, by company, by State.

1. What Are the Pros and Cons Associated With Using Various Possible Level(s) of Aggregation for Different Contexts Relating to Implementation of the Provisions in Section 2718 (That Is, Submitting Medical Loss Ratio-Related Statistics to the Secretary, Publicly Reporting This Information, Determining if Rebates Are Owed, and Paying Out Rebates)?

2. What Are the Pros and Cons Associated With Using Various Possible Geographic Level(s) of Aggregation (e.g., State-Level, National, etc.) for Medical Loss Ratio-Related Statistics in These Same Contexts (i.e., Submitting Medical Loss Ratio-Related Statistics to the Secretary, Publicly Reporting This Information, Determining if Rebates Are Owed, and Paying Out Rebates)?

#### *D. Data Submission and Public Reporting*

PPACA requires health insurance issuers offering group or individual health insurance coverage to annually submit data to the Secretary relating to several medical loss ratio-related statistics (including the percentage of premiums spent on reimbursement for clinical services provided to enrollees, activities that improve health care quality, and on all other non-claims costs) for posting on the Department's Internet Web site.

1. To what extent do States or other entities currently require annual submission of actual medical loss ratio-related statistics for the individual, small group, and large group markets? How do these current requirements compare with the requirements in PPACA?



2. How soon after the end of the plan year do States and other entities typically require issuers to submit the required MLR-related statistics? What are the pros and cons associated with various timeframes?

3. What kinds of supporting documentation are necessary for interpreting these kinds of statistics? What data elements and format are typically used for submitting this information?

4. What methods do issuers use for purposes of submitting medical loss ratio-related data to these entities (for example, electronic filing and paper filing)?

5. To what extent is MLR-related information submitted to States or other entities currently made available to the public, and how is it made available (for example, level of aggregation, and mechanism for public reporting)? What are the pros and cons associated with these various methods?

6. Are there any industry standards or best practices relating to submission, interpretation, and communication of MLR-related statistics?

7. What, if any, special considerations are needed for non-calendar year plans?

#### E. Rebates

PPACA requires health insurance issuers whose coverage does not meet the applicable minimum standard for a given plan year to provide rebates to enrollees on a pro rata or proportional basis. The rebate is to be calculated based on the product of: (1) The amount by which the applicable minimum standard exceeds the percentage that the coverage spent on clinical services and quality improvement for a given plan year; and (2) the total amount of premium revenue for that plan year (excluding Federal and State taxes and licensing or regulatory fees and after accounting for payments or receipts for risk adjustment, risk corridors, and reinsurance under sections 1341, 1342, and 1343 of PPACA).

1. To what extent do States and other entities currently require MLR-related rebates for the individual, small group, large group, and/or other insurance markets, and how are these rebates calculated and distributed?

2. How soon after the end of the plan year do States and other entities currently require issuers to determine if rebates are owed?

3. What are the pros and cons of various timeframes and methodologies for calculating rebates?

4. How do States and other entities currently determine which enrollees should receive medical loss ratio-related

rebates? <sup>1</sup> What are the pros and cons associated with these approaches?

5. What method(s) do States and other entities currently require issuers to use when notifying enrollees if rebates are owed, and paying the rebates? What are the pros and cons associated with these approaches?

6. Are there any important technical issues that may affect the processes for determining if rebates are owed, and calculating the amount of rebates to be paid to each enrollee?

#### F. Federal Income Tax

Under Section 9016 of the PPACA, the amendment to Section 833 of the Code applies to taxable years beginning after December 31, 2009. Under Section 2718(c) of the PHS Act, the NAIC is directed to establish uniform definitions for purposes of the reporting required under Section 2718(a) not later than December 31, 2010.

What guidance, if any, is needed for purposes of applying Section 833 of the Code for the first taxable year beginning after December 31, 2009?

#### G. Enforcement

PPACA requires the Secretary to publish regulations for enforcing the provisions of this section, and specifies that the Secretary may provide for appropriate penalties.

1. What methods do States and other entities currently use in enforcing medical loss ratio-related requirements for the individual, small group, large group, and other insurance markets (for example, oversight and audit requirements)? What other methods could be used?

2. What, if any, penalties do these entities currently apply relating to noncompliance with medical loss ratio-related requirements? What, if any, related appeals processes are currently available to issuers?

#### H. Comments Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act

Executive Order 12866 requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. These costs and benefits are not limited to the Federal government, but pertain to the affected public as a whole. Under Executive Order 12866, a determination

must be made whether implementation of Section 2718 of the PHS Act will be economically significant. A rule that has an annual effect on the economy of \$100 million or more is considered economically significant.

In addition, the Regulatory Flexibility Act may require the preparation of an analysis of the economic impact on small entities of proposed rules and regulatory alternatives. An analysis under the Regulatory Flexibility Act must generally include, among other things, an estimate of the number of small entities subject to the regulations (for this purpose, plans, employers, and issuers and, in some contexts small governmental entities), the expense of the reporting, recordkeeping, and other compliance requirements (including the expense of using professional expertise), and a description of any significant regulatory alternatives considered that would accomplish the stated objectives of the statute and minimize the impact on small entities.

The Paperwork Reduction Act requires an estimate of how many “respondents” will be required to comply with any “collection of information” requirements contained in regulations and how much time and cost will be incurred as a result. A collection of information includes recordkeeping, reporting to governmental agencies, and third-party disclosures.

Furthermore, Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$135 million.

The Departments are requesting comments that may contribute to the analyses that will be performed under these requirements, both generally and with respect to the following specific areas:

1. What Policies, Procedures, or Practices of Group Health Plans, Health Insurance Issuers, and States May Be Impacted by Section 2718 of the PHS Act?

a. What direct or indirect costs and benefits would result?

b. Which stakeholders will be impacted by such benefits and costs?

c. Are these impacts likely to vary by insurance market, plan type, or geographic area?

<sup>1</sup> For example: Current policyholders, current policyholders who were enrolled in the coverage during the applicable time period, or all policyholders who were enrolled in the coverage during the applicable time period (regardless of whether they are still active policyholders).

2. Are There Unique Costs and Benefits for Small Entities Subject to Section 2718 of the PHS Act?

a. What special consideration, if any, is needed for these health insurance issuers or plans?

b. What costs and benefits have issuers experienced in implementing requirements relating to minimum medical loss ratio standards, reporting and rebates under State insurance laws or otherwise?

3. Are There Additional Paperwork Burdens Related to Section 2718 of the PHS Act, and, if so, What Estimated Hours and Costs Are Associated With Those Additional Burdens?

Signed at Washington, DC this 6th day of April, 2010.

**Clarissa C. Potter,**

*Deputy Chief Counsel, (Technical), Internal Revenue Service, U.S. Department of the Treasury.*

Signed at Washington, DC this 7th day of April, 2010.

**Michael F. Mundaca,**

*Assistant Secretary, (Tax Policy), U.S. Department of the Treasury.*

Signed at Washington, DC this 7th day of April, 2010.

**Phyllis C. Borzi,**

*Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

Signed at Washington, DC this 8th day of April, 2010.

**Donald B. Moulds,**

*Acting Assistant Secretary for Planning and Evaluation, Office of the Secretary, Department of Health and Human Services.*

[FR Doc. 2010-8599 Filed 4-12-10; 10:15 am]

**BILLING CODE 4150-03-P**

## DEPARTMENT OF DEFENSE

### Department of the Army

#### 32 CFR Part 655

**RIN 0702-AA58**

[Docket No. USA-2008-0001]

#### Radiation Sources on Army Land

**AGENCY:** Department of the Army, DoD.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The Department of the Army proposes to revise its regulations concerning radiation sources on Army land. The Army requires Non-Army agencies (including their civilian contractors) to obtain an Army Radiation Permit (ARP) from the garrison commander to use, store or

possess ionizing radiation sources on an Army Installation. For the purpose of this proposed rule, "ionizing radiation source" means any source that, if held or owned by an Army organization, would require a specific Nuclear Regulatory Commission (NRC) license or Army Radiation Authorization (ARA). The purpose of the ARP is to protect the public, civilian employees and military personnel on an installation from potential exposure to radioactive sources. The U.S. Army Safety Office which is the proponent for the Army Radiation Safety Program is revising the regulation to reflect the Nuclear Regulatory Commission changes to licensing of Naturally-Occurring and Accelerator-Produced Radioactive Material (NARM). Executive Order 12866 Regulatory Planning and Review and Executive Order 13422 Further Amendment to Executive Order 12866 on Regulatory Planning and Review were followed to rewrite this rule.

**DATES:** Consideration will be given to all comments received by June 14, 2010.

**ADDRESSES:** You may submit comments, identified by 32 CFR Part 655, Docket No. USA-2008-0001 and/or RIN 0702-AA58, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

**Instructions:** All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Tim Mikulski, (703) 601-2408.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

On October 1, 2007, the Nuclear Regulatory Commission (NRC) issued a final rule which establishes requirements for the expanded definition of byproduct material. 72 FR 55864 (Oct. 1, 2007). The final regulation became effective on November 30, 2007. The NRC revised the definition of byproduct material in 10 CFR Parts 20, 30, 50, 72, 150, 170, and 171 to be consistent with section 651(e) of the Energy Policy Act of 2005.

The same revision to the definition of byproduct material was made in a separate rulemaking for 10 CFR Part 110 (April 20, 2006; 71 FR 20336). The Department of the Army is revising 32 CFR Part 655 to reflect the changes of the expanded definition of byproduct material that include Naturally-Occurring and Accelerator-Produced Radioactive Material (NARM). Specifically, the current 32 CFR 655.10 paragraphs (a)(2), (3) and (4) have been removed, as the sources described in these sections will now be covered under 32 CFR 655.10(a)(1), which incorporates the expanded NRC definition of byproduct material (*see, e.g.,* 10 CFR 20.1003).

Additional changes in the rule include:

—Clarification that the use, storage, or possession of ionizing radiation sources must be in connection with an activity of the Department of Defense or in connection with a service to be performed on the installation for the benefit of the Department of Defense, in accordance with 10 U.S.C. 2692(b)(1).

—The use of ionizing radiation to differentiate between ionizing and nonionizing radioactive sources. Nonionizing radiation sources include lasers and radio frequency sources that are not covered by an ARP.

—The addition of an exemption of (1) non-Army entities using Army owned/licensed radioactive materials and (2) other Military Departments needing an ARP to bring radioactive sources on Army lands. The Radiation Safety Officer (RSO) must be notified prior to ionizing radiation sources being brought onto the installation.

—Clarification on when to file a NRC Form 241.

—The time the ARP is valid has been extended from three months to twelve months to reduce the need for reapplication.

—Consideration of host nation regulations was included for Outside the Continental United States (OCONUS) military installations.

—The land will be restored to the condition it was in prior to the effective date of the ARP.

##### B. Regulatory Flexibility Act

The Department has certified that the rule will not have a significant economic impact on a substantial number of small entities because the rule imposes no additional costs. However, since this is a proposed rule, the Department of the Army seeks comments from small entities that may be impacted by this proposed rule change.

### C. Unfunded Mandates Reform Act

The Department of the Army has determined that the Unfunded Mandates Reform Act does not apply because the proposed rule does not include a mandate that may result in estimated costs to State, local or Tribal governments in the aggregate, or the private sector, of \$100 million or more.

### D. National Environmental Policy Act

The Army has determined that this is not a major Federal action significantly affecting the human environment.

### E. Paperwork Reduction Act

Section 655.10(d) of this proposed rule contains information collection requirements. DoD has submitted the following proposal to OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

*Title:* Letter Permit for Non-Army Agency Radiation Sources on Army Land.

*Type of Request:* Reinstatement.

*Number of Respondents:* 235.

*Responses per Respondent:* 1.

*Annual Responses:* 235.

*Average Burden per Response:* 2 hours.

*Annual Burden Hours:* 470 hours.

*Needs and Uses:* Army radiation permits are required for use, storage, or possession of radiation sources by non-Army agencies (including their civilian contractors) on an Army installation.

The non-Army applicant will apply by letter, e-mail or facsimile with supporting documentation to the garrison commander through the appropriate tenant commander or garrison director.

The Army radiation permit application will specify the effective date and duration for the Army radiation permit and describe the purposes for which the Army radiation permit is being sought. The application will include identification of the trained operating personnel who will be responsible for implementation of the activities authorized by the permit and

a summary of their professional qualifications; the point-of-contact name and phone number for the application; the applicant's radiation safety Standing Operating Procedures (SOPs); storage provisions when the radiation source is not in use; and procedures for notifying the installation of reportable incidents/accidents.

*Affected Public:* Business or other for-profit entities; not-for-profit institutions; State, local or Tribal governments.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

Written comments and recommendations on the proposed information collection should be sent to the Office of Management and Budget, Desk Officer for the Department of Defense, Room 10235, New Executive Office Building, Washington, DC 20503, fax number: (202) 395-5167, with a copy to the Department of the Army, Army Safety Office, Chief of Staff DACS-SF, 2221 S. Clark Street, Room 1113, Arlington, VA 22202 Attn: Mr. Greg Komp, telephone (703) 601-2405. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

You may also submit comments, identified by docket number and title, by the following method:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

*Instructions:* All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write or e-mail the Department of the Army, Army Safety Office, Chief of Staff DACS-SF, 2221 S. Clark Street, Room 1113, Arlington, VA 22202 Attn: Mr. Greg Komp, telephone (703) 601-2405 or e-mail [Greg.Komp@us.army.mil](mailto:Greg.Komp@us.army.mil).

### F. Executive Order 12630 (Government Actions and Interference With Constitutionally Protected Property Rights)

The Department of the Army has determined that Executive Order 12630 does not apply because the proposed

rule does not impair private property rights.

### G. Executive Order 12866 (Regulatory Planning and Review)

The Department of the Army has determined that according to the criteria defined in Executive Order 12866 this proposed rule is a significant regulatory action. As such, the proposed rule was subject to Office of Management and Budget review under section 6(a)(3) of the Executive Order.

### H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)

The Department of the Army has determined that according to section 2-202 of Executive Order 13045 this proposed rule is not a covered regulatory action to which Executive Order 13045 applies nor will this rule present environmental health risks or safety risks that will disproportionately affect children.

### I. Executive Order 13132 (Federalism)

The Department of the Army has determined that this proposed rule will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**William T. Wolf,**

*Brigadier General, U.S. Army, Director of Army Staff Safety.*

### List of Subjects in 32 CFR Part 655

Environmental protection, Radiation protection.

For reasons stated in the preamble the Department of the Army proposes to revise 32 CFR Part 655 to read as follows:

### PART 655—RADIATION SOURCES ON ARMY LAND

*Authority:* 10 U.S.C. 3012.

#### § 655.10 Oversight of radiation sources brought on Army land by non-Army entities (AR 385-10).

(a) Army radiation permits are required for use, storage, or possession of ionizing radiation sources by non-Army agencies (including their civilian contractors) on an Army installation. Such use, storage, or possession of ionizing radiation sources must be in connection with an activity of the Department of Defense or in connection with a service to be performed on the installation for the benefit of the Department of Defense, in accordance with 10 U.S.C. 2692(b)(1). Approval by

the garrison commander is required to obtain an Army radiation permit. For the purposes of this section, an ionizing radiation source is:

(1) Radioactive material used, stored, or possessed under the authority of a specific license issued by the Nuclear Regulatory Commission (NRC) or an Agreement State (10 CFR Parts 30, 40, and 70 or Agreement State equivalent); or

(2) A machine-produced ionizing-radiation source capable of producing an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the ionizing radiation source or from any surface that the radiation penetrates.

(b) A permit is not required for Non-Army entities (including civilian contractors) that use Army licensed radioactive material on Army installations in coordination with the NRC licensee. The Non-Army entity must obtain permission from the Army NRC licensee to use the radioactive materials and be in compliance with all of the Army NRC license conditions prior to beginning work on Army land.

(c) Other Military Departments are exempt from the requirement of subsection (a) to obtain an Army radiation permit; however the garrison Radiation Safety Officer (RSO) must be notified prior to radioactive sources being brought onto the installation.

(d) Applicants will apply by letter with supporting documentation (subsection (e) of this section) to the garrison commander through the appropriate tenant commander or garrison director. Submit the letter so that the garrison commander receives the application at least 30 calendar days before the requested effective date of the permit.

(e) The Army radiation permit application will specify effective date and duration for the Army radiation permit and describe the purposes for which the Army radiation permit is being sought. The application will include: identification of the trained operating personnel who will be responsible for implementation of the activities authorized by the permit and a summary of their professional qualifications; the point-of-contact name and phone number for the application; the applicant's radiation safety Standing Operating Procedures (SOPs); storage provisions when the ionizing radiation source is not in use; and procedures for notifying the garrison of reportable incidents/accidents.

(f) The garrison commander will approve the application only if the

applicant provides evidence to show that one of the following is true:

(1) The applicant possesses a valid NRC license or Department of Energy (DOE) radiological work permit that allows the applicant to use the source in the manner specified in the Army radiation permit application;

(2) The applicant possesses a valid Agreement State license that allows the applicant to use radioactive material in the manner specified in the Army radiation permit application. An applicant operating in areas subject to exclusive Federal jurisdiction (Agreement States Letter SP-96-022) has to file a NRC Form-241, Report of Proposed Activities in Non-Agreement States, with the NRC in accordance with 10 CFR 150.20(b);

(3) For machine-produced ionizing radiation sources, the applicant has an appropriate State authorization that allows the applicant to use the source as specified in the Army radiation permit application and has in place a radiation safety program that complies with Army regulations; or

(4) For overseas installations, the applicant has an appropriate host-nation authorization as necessary that allows the applicant to use the source in the manner specified in the Army radiation permit application and has in place a radiation safety program that complies with applicable Army regulations and Host Nation regulations. Applicants will comply with applicable status-of-forces agreements (SOFAs) and other international agreements.

(g) All Army radiation permits will require applicants to remove all permitted sources from Army property prior to the expiration of the permit and restore all real or personal property of the Army that was modified, altered, or otherwise changed as a result of the applicant's activities to the condition such property was in prior to the effective date of the permit.

(h) An Army radiation permit issued under provisions of this section will be valid for no more than 12 months.

(i) Disposal of radioactive material (byproduct, source or special nuclear) by non-Army agencies on Army property is prohibited. However, the garrison commander may give written authorization for releases of radioactive material to the atmosphere or to the sanitary sewerage system that are in compliance with all applicable Federal, State, and local laws or regulations, including but not limited to, the NRC regulations at 10 CFR Part 20, Subpart K or Agreement State equivalent, and regulations issued by the Army or the Department of Defense, to include compliance with any applicable

requirement to obtain a permit, license, or other authorization, or to submit any information, notification, or report for such release.

[FR Doc. 2010-8503 Filed 4-13-10; 8:45 am]

BILLING CODE 3710-08-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2010-0126]

RIN 1625-AA00

#### Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes establishment of safety zones for annual events in the Captain of the Port Detroit zone. This proposed rule adds events not previously published in Coast Guard regulations. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 14, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0126 using any one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>.
- *Fax:* 202-493-2251.
- *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Lieutenant Commander Matt Merriman, Waterways Management Division, U.S. Coast Guard

Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568-9508, e-mail [Matthew.W.Merriman@uscg.mil](mailto:Matthew.W.Merriman@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking USCG-2010-0126, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rule" and insert USCG-2010-0126, in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may

change the rule based on your comments.

##### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert USCG-2010-0126, and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Background and Purpose

This proposed rule will add additional events not previously published in the regulations found in 33 CFR 165.941, Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone. These safety zones are necessary to protect vessels and people from the hazards associated with fireworks displays. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

##### Discussion of Proposed Rule

The proposed rule and associated safety zones are necessary to ensure the safety of vessels and people during

annual firework events in the Captain of the Port Detroit area of responsibility.

The proposed safety zones will be enforced only immediately before, during, and after events that pose hazard to the public, and only upon notice by the Captain of the Port.

The Captain of the Port Detroit will notify the public that the zones in this proposal are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative. The Captain of the Port or his designated representative may be contacted via VHF Channel 16.

The Coast Guard expects the final rule will be effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest due to the need to protect the public from the dangers associated with fireworks displays.

##### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

##### Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of these safety zones will be periodic, of short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced

immediately before, during, and after the time the events occur. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. The Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas designated as safety zones in subparagraphs (50) through (56) during the dates and times the safety zones are being enforced.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for short periods of time, and only once per year, per zone. The safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions

concerning its provisions or options for compliance, please contact Lieutenant Commander Matt Merriman, Waterways Management Division, U.S. Coast Guard Sector Detroit, 110 Mount Elliot Ave., Detroit, MI 48207; (313) 568–9508.

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### **Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### **Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### **Taking of Private Property**

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### **Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### **Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to

safety that might disproportionately affect children.

#### **Indian Tribal Governments**

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. We invite your comments on how this proposed rule might impact Tribal governments, even if that impact may not constitute a “Tribal implication” under the Order.

#### **Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### **Technical Standards**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### **Environment**

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction

M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing safety zones around fireworks displays and is therefore expected to be categorically excluded, under section 2.B.2. Figure 2–1, paragraph 34(g), of the Instruction. Comments on this section will be considered before we make the final decision on whether this proposed rule should be categorically excluded from further environmental review. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

#### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Amend § 165.941 by adding new paragraphs (a)(50) through (a)(56) to read as follows:

#### § 165.941 Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone.

(a) \* \* \*

(50) Celebrate America Fireworks, Grosse Pointe Farms, MI:

(i) *Location:* All waters of Lake St. Clair within a 500-foot radius of the fireworks launch site located at position 42°22'58" N, 082°53'46" W. (NAD 83). This area is located southeast of the Grosse Point Yacht Club.

(ii) *Expected date:* One evening during the third week in June. The exact dates and times for this event will be determined annually.

(51) Target Fireworks, Detroit, MI:

(i) *Location:* The following three areas are safety zones:

(A) The first safety zone area will encompass all waters of the Detroit River bounded by the arc of a circle with a 900-foot radius with its center in position 42°19'23" N, 083°04'34" W.

(B) The second safety zone area will encompass a portion of the Detroit River bounded on the South by the International Boundary line, on the West by 83°03'30" W, on the North by the City of Detroit shoreline and on the East by 083°01'15" W.

(C) The third safety zone will encompass a portion of the Detroit River bounded on the South by the International Boundary line, on the West by the Ambassador Bridge, on the North by the City of Detroit shoreline, and on the East by the downstream end of Belle Isle. The Captain of the Port Detroit has determined that vessels below 65 feet in length may enter this zone.

(ii) *Expected date:* One evening during the last week in June. The exact dates and times for this event will be determined annually.

(52) Sigma Gamma Association Fireworks, Grosse Pointe Farms, MI:

(i) *Location:* All waters of Lake St. Clair, within a 300-yard radius of the fireworks launch site located at position 42°27' N, 082°52' W (NAD 83) This position is located in the vicinity of Ford's Cove.

(ii) *Expected date:* One evening during the last week in June. The exact dates and times for this event will be determined annually.

(53) Southside Summer Fireworks, Port Huron, MI:

(i) *Location:* All waters of St. Clair River within a 300 yard radius of position 42°57'55" N, 082°25'20" W. This position is located on the shore of the St. Clair River in the vicinity of Oak and 3rd Street, Port Huron, MI. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date:* One evening during the last week in June. The exact dates and times for this event will be determined annually.

(54) Bay City Fireworks Festival, Bay City, MI:

(i) *Location:* All waters of the Saginaw River near Bay City, MI, from the Veteran's Memorial Bridge, located at position 43°35.8' N; 083°53.6' W, south approximately 1000 yards to the River Walk Pier, located at position 43°35.3' N; 083°53.8' W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date:* Three evenings during the first week in July. The exact dates and times for this event will be determined annually.

(55) Toledo 4th of July Fireworks, Toledo, OH:

(i) *Location:* All waters of the Maumee River within a 300-yard radius of the fireworks launch site located at position 41°38'35" N, 083°31'54" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected date:* One evening during the first week in July. The exact dates and times for this event will be determined annually.

(56) Toledo Labor Day Fireworks, Toledo, OH:

(i) *Location:* All waters of the Maumee River within a 300-yard radius of the fireworks launch site located at position 41°38'35" N, 083°31'54" W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(ii) *Expected Date:* One evening during the first week in September. The exact dates and times for this event will be determined annually.

\* \* \* \* \*

Dated: March 31, 2010.

F.M. Midgett,

*Captain, U.S. Coast Guard, Captain of the Port Detroit.*

[FR Doc. 2010–8477 Filed 4–13–10; 8:45 am]

BILLING CODE 9110–04–P

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

##### 33 CFR Part 165

[Docket No. USCG–2010–0225]

RIN 1625–AA00

#### Safety Zone; Milwaukee Air and Water Show, Milwaukee, Lake Michigan, Milwaukee, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary safety zone on Lake Michigan near Bradford Beach in Milwaukee, Wisconsin. This zone is intended to restrict vessels from a portion of Lake Michigan due to a large-scale air show and a fireworks display. This proposed safety zone is necessary to protect the surrounding public and their vessels from the hazards associated with a large-scale air show and fireworks display.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 14, 2010.

**ADDRESSES:** You may submit comments identified by docket number USCG–2010–0225 using any one of the following methods:



(1) *Federal eRulemaking Portal*: <http://www.regulations.gov>.

(2) *Fax*: 202–493–2251.

(3) *Mail*: Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery*: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Petty Officer Adam Kraft, U.S. Coast Guard Sector Lake Michigan; telephone 414–747–7154, e-mail [Adam.D.Kraft@uscg.mil](mailto:Adam.D.Kraft@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2010–0225), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (via <http://www.regulations.gov>) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail

address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the “submit a comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu select “Proposed Rule” and insert “USCG–2010–0225” in the “Keyword” box. Click “Search” then click on the balloon shape in the “Actions” column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG–2010–0225” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### **Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time

and place announced by a later notice in the **Federal Register**.

##### **Background and Purpose**

This temporary safety zone is necessary to ensure the safety of the public and vessels from the hazards associated with the Milwaukee Air and Water Show. The Captain of the Port, Sector Lake Michigan, has determined that the Milwaukee Air and Water Show presents significant risks to public safety and property. The likely combination of congested waterways and a large-scale Air show and fireworks display could easily result in serious injuries or fatalities. Last year this event occurred with the same proposed safety zone in effect. The zone provided a safe environment for the public to enjoy a large-scale air show. This year they will be adding a short 15 minute fireworks show to the end of the air show, occurring on Friday, June 11, 2010.

##### **Discussion of Proposed Rule**

The proposed rule and associated safety zone is necessary to ensure the safety of vessels and people during the Milwaukee Air and Water show. The safety zone is a 4,000 yard by 1,000 yard rectangle located on Lake Michigan, parallel to Bradford Beach in Milwaukee, Wisconsin. The safety zone will encompass all U.S. waters of Lake Michigan bound by a line drawn from 43°02'57" N, 087°52'53" W; then north to 43°04'40" N, 087°51'29" W; then east to 43°04'33" N, 087°51'12" W; then south to 43°02'50" N, 087°52'36" W; then west returning to the point of origin (NAD 83). The proposed safety zone will be enforced only immediately before, during, and immediately after the event and only upon notice by the Captain of the Port, Sector Lake Michigan. The Captain of the Port, Sector Lake Michigan, will use all appropriate means to notify the public when the safety zone will be enforced, including publication in the **Federal Register** in accordance with 33 CFR 165.7(a). Means of notification may also include Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port, Sector Lake Michigan, will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

All persons and vessels shall comply with the instructions of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her



designated on-scene representative. The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

The Coast Guard expects this temporary final rule will be effective less than 30 days after publication in the **Federal Register** because delaying the effective date would be contrary to the public interest due to the need to protect the public from the dangers associated with fireworks displays.

### Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

### Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This is not a significant regulatory action because the safety zone will be in effect for a minimal amount of time. Plus, vessels may still transit the area with the permission of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor, between 12:01 a.m. on June 10, 2010 through 11:59 p.m. on June 13, 2010, in the portion of Lake Michigan within the safety zone established below.

This safety zone will not have a significant economic impact on a substantial number of small entities for

the following reasons: This safety zone will be in effect for only a few days and enforced for only a few hours. Plus, vessels may still transit through the zone with the permission of the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative. Moreover, the Coast Guard will give notice to the public that the regulation is in effect and when it will be enforced.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see ADDRESSES*) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Adam Kraft, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414)747–7154. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of

\$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

This proposed rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

## Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves establishing a temporary safety zone around the air show and fireworks display and is therefore expected to be categorically excluded, under section 2.B.2. Figure 2-1, paragraph 34(g), of the Instruction. Comments on this section will be considered before we make the final decision on whether this proposed rule should be categorically excluded from further environmental review. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

## List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0225 to read as follows:

### § 165.T09-0225 Safety Zone; Milwaukee Air and Water Show, Lake Michigan, Milwaukee, WI

(a) *Location.* The following area is a temporary safety zone: A 4,000 yard by 1,000 yard rectangle located on Lake Michigan, parallel to Bradford Beach in Milwaukee, Wisconsin. The safety zone will encompass all U.S. waters of Lake Michigan bound by a line drawn from 43°02'57" N, 087°52'53" W; then north to 43°04'40" N, 087°51'29" W; then east to 43°04'33" N, 087°51'12" W; then south to 43°02'50" N, 087°52'36" W; then west returning to the point of origin (NAD 83).

(b) *Effective period.* This regulation is effective from 12:01 a.m. on June 10, 2010 through 11:59 p.m. on June 13, 2010. It will be enforced between noon and 4 p.m. on June 10, 2010, between the hours of 2:30 p.m. and 9:30 p.m. on June 11, 2010, and again between the hours of 9 a.m. and 5 p.m. on June 12 and 13, 2010. The Captain of the Port, Sector Lake Michigan, or his or her on-scene representative may terminate this operation at anytime.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring in this safety zone is prohibited unless authorized by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative.

(2) This safety zone is closed to all vessel traffic except as permitted by the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sector Lake Michigan, is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Sector Lake Michigan, to act or his or her behalf. The on-scene representative of the Captain of the Port, Sector Lake Michigan, will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sector Lake Michigan, or his or her designated on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sector Lake Michigan, or his or her on-scene representative.

Dated: April 1, 2010.

**L. Barndt,**

*Captain, U.S. Coast Guard, Captain of the Port, Sector Lake Michigan.*

[FR Doc. 2010-8475 Filed 4-13-10; 8:45 am]

**BILLING CODE 9110-04-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 60, 61, and 63

[EPA-R06-OAR-2006-0851; FRL-9137-1]

### Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for the State of Louisiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the Louisiana Department of Environmental Quality (LDEQ) updated regulations for receiving delegation of EPA authority for implementation and enforcement of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs) for all sources (both part 70 and non-part 70 sources). These regulations apply to certain NSPS promulgated by EPA at 40 CFR part 60, as amended through July 1, 2008; and certain NESHAPs promulgated by EPA, as amended through July 1, 2008, for both 40 CFR part 61 and 63 standards. The rule also incorporates by reference certain other revisions made after July 1, 2008. The delegation of authority under this action does not apply to sources located in Indian Country. EPA is providing notice that it has approved delegation of certain NSPS to LDEQ, and taking direct final action to approve the delegation of certain NESHAPs to LDEQ.

**DATES:** Written comments must be received on or before *May 14, 2010*.

**ADDRESSES:** Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Comments may also be submitted electronically or through hand delivery/ courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Kenneth Boyce, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7259, fax (214) 665-7263, e-mail address [boyce.kenneth@epa.gov](mailto:boyce.kenneth@epa.gov).

**SUPPLEMENTARY INFORMATION:** In the final rules section of this **Federal Register**, EPA is approving the State's request for delegation of authority as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: February 8, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

[FR Doc. 2010-8524 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[FRL-9136-9]

#### Ocean Dumping; Guam Ocean Dredged Material Disposal Site Designation

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to designate the Guam Deep Ocean Disposal Site (G-DODS) as a permanent ocean dredged material disposal site (ODMDS) located offshore of Guam. Dredging is essential for maintaining safe navigation at port and naval facilities in Apra Harbor and other locations around Guam. Not all dredged materials are suitable for beneficial reuse (e.g., construction materials, landfill cover), and not all suitable materials can be re-used or stockpiled for future use given costs, logistical constraints, and capacity of existing land disposal or re-handling sites. Therefore, there is a need to designate a permanent ODMDS offshore of Guam. Disposal operations at the site will be limited to a maximum of 1 million cubic yards (764,555 cubic meters) per calendar year and must be conducted in accordance with the Site Management and Monitoring Plan. The proposed ODMDS will be monitored periodically to ensure that the site operates as expected.

**DATES:** Comments on this proposed rule must be received no later than May 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Mr. Allan Ota, Dredging and Sediment Management Team, U.S. Environmental Protection Agency, Region IX (WTR-8), 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 972-3476 or FAX: (415) 947-3537 or E-mail: [ota.allan@epa.gov](mailto:ota.allan@epa.gov).

**SUPPLEMENTARY INFORMATION:** The supporting document for this site designation is the Final Environmental

Impact Statement for the Designation of an Ocean Dredged Material Disposal Site Offshore of Guam. This document is available for public inspection at the following locations:

1. Guam EPA's Main Office, 17-3304 Mariner Avenue, Tiyan, Guam 96913.
2. Nieves M. Flores Memorial Public Library, 254 Martyr Street, Hagatna, Guam 96910.
3. Barrigada Public Library, 177 San Roque Drive, Barrigada, Guam 96913.
4. Dededo Public Library, 283 West Santa Barbara Avenue, Dededo, Guam 96929.
5. Maria R. Aguigui Memorial Library (Agat Public Library), 376 Cruz Avenue, Guam 96915.
6. Rosa Aguigui Reyes Memorial Library (Merizo Public Library), 376 Cruz Avenue, Merizo, Guam 96915.
7. Yona Public Library, 265 Sister Mary Eucharita Drive, Yona, Guam 96915.
8. EPA Region IX, Library, 75 Hawthorne Street, 13th Floor, San Francisco, California 94105.
9. EPA Public Information Reference Unit, Room 2904, 401 M Street, SW., Washington, DC 20460.
10. EPA Web site: <http://www.epa.gov/region9/>.
11. U.S. Army Corps of Engineers' (USACE) Web site: <http://www.poh.usace.army.mil>.

#### A. Potentially Affected Entities

Entities potentially affected by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the G-DODS, under the Marine Protection Research and Sanctuaries Act, 33 U.S.C. 1401 *et seq.* The Rule would be primarily of relevance to parties of the island of Guam seeking permits from the USACE to transport dredged material for the purpose of disposal into ocean waters at the G-DODS, as well as the USACE itself (when proposing to dispose of dredged material at the G-DODS). Potentially affected categories and entities seeking to use the G-DODS and thus subject to this Rule include:

Category	Examples of potentially affected entities
Industry and General Public .....	<ul style="list-style-type: none"> <li>• Ports.</li> <li>• Marinas and Harbors.</li> <li>• Shipyards and Marine Repair Facilities.</li> <li>• Berth owners.</li> </ul>
State, local and Tribal governments .....	<ul style="list-style-type: none"> <li>• Governments owning and/or responsible for ports, harbors, and/or berths.</li> <li>• Government agencies requiring disposal of dredged material associated with public works projects.</li> </ul>
Federal government .....	<ul style="list-style-type: none"> <li>• USACE Civil Works and O &amp; M projects.</li> <li>• Other Federal agencies, including the Department of Defense.</li> </ul>

This table lists the types of entities that EPA is now aware potentially could be affected. EPA notes, however, that nothing in this Rule alters in any way, the jurisdiction of EPA, or the types of entities regulated under the Marine Protection Research and Sanctuaries Act. To determine if you or your organization may be potentially affected by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the G-DODS. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

## B. Background

Ocean disposal of dredged materials is regulated under Title I of the Marine Protection, Research and Sanctuaries Act (MPRSA; 33 U.S.C. 1401 *et seq.*). The EPA and the USACE share responsibility for the management of ocean disposal of dredged material. Under Section 102 of MPRSA, EPA has the responsibility for designating an acceptable location for the ODMDS. With concurrence from EPA, the USACE issues permits under MPRSA Section 103 for ocean disposal of dredged material deemed suitable according to EPA criteria in MPRSA Section 102 and EPA regulations in Title 40 of the Code of Federal Regulations Part 227 (40 CFR 227).

It is EPA's policy to publish an EIS for all ODMDS designations (**Federal Register**, Volume 63, Page 58045 [63 FR 58045], October 1998). A site designation EIS is a formal evaluation of alternative sites which examines the potential environmental impacts associated with disposal of dredged material at various locations. The EIS must first demonstrate the need for the ODMDS designation action (40 CFR 6.203(a) and 40 CFR 1502.13) by describing available or potential aquatic and non-aquatic (*i.e.*, land-based) alternatives and the consequences of not designating a site—the No Action Alternative. Once the need for an ocean disposal site is established, potential sites are screened for feasibility through the Zone of Siting Feasibility (ZSF) process. Potential alternative sites are then evaluated using EPA's ocean disposal criteria at 40 CFR Part 228 and compared in the EIS. Of the sites which satisfy these criteria, the site which best complies with them is selected as the preferred alternative for formal designation through rulemaking published in the **Federal Register** (FR).

Formal designation of an ODMDS in the **Federal Register** does not constitute approval of dredged material for ocean disposal. Designation of an ODMDS provides an ocean disposal alternative for consideration in the review of each proposed dredging project. Before any ocean disposal may take place, dredging projects must demonstrate a need for ocean disposal. Alternatives to ocean disposal, including the option for beneficial re-use of dredged material, will be evaluated for each dredging project. Ocean disposal is only allowed when EPA and USACE determine that the proposed activity is environmentally acceptable according to the criteria at 40 CFR Part 227. Decisions to allow ocean disposal are made on a case-by-case basis through the MPRSA Section 103 permitting process, resulting in a USACE permit or its equivalent process for USACE's Civil Works projects. Material proposed for disposal at a designated ODMDS must conform to EPA's permitting criteria for acceptable quality (40 CFR Parts 225 and 227), as determined from physical, chemical, and bioassay/bioaccumulation tests as prescribed by national sediment testing protocols (EPA and USACE 1991). Only clean non-toxic dredged material is acceptable for ocean disposal. The proposed ODMDS will be monitored periodically to ensure that the site operates as expected. This proposed site designation has been prepared pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA). This ocean disposal site designation is based on EPA's general and specific criteria as evaluated in the March 2010 "Final Environmental Impact Statement for Designation of an Ocean Dredged Material Disposal Site Offshore of Guam" (Final EIS).

Historically, dredged material generated around Guam by the Navy and the Port Authority of Guam (PAG) has either been placed in upland dewatering/disposal sites or beneficially used. These are currently the only management options for dredged material. The anticipated volume of dredged material generated around Guam over the next 30 years would exceed the capacity of known or existing stockpile or beneficial use options. The need for additional dredged material disposal options is exacerbated by the planned increase in military presence on Guam, which would include extensive Navy and PAG harbor and navigation improvements. Assuming all existing upland dewatering facilities are used and all known beneficial use options are fully implemented, there would still be a

substantial excess of dredged material to be managed. An ODMDS provides an important management option for dredged material that is suitable and non-toxic, but for which other management options are not practical. The purpose of this action is to ensure that adequate, environmentally-acceptable ocean disposal site capacity, in conjunction with other management options including upland disposal and beneficial reuse, is available for suitable dredged material generated from Apra Harbor and other locations on and around Guam.

EPA and USACE encourage the use of dredged material for beach replenishment in areas degraded by erosion. The grain size distribution of dredged material must be compatible with the receiving beach, and biological and water quality impacts must be considered prior to permitting of beach disposal. EPA and USACE evaluate the selection of appropriate disposal methods on a case-by-case basis for each permit. Additionally, opportunities arise periodically to use dredged material for marine landfilling projects, also referred to as the creation of "fastlands." When the need arises, the use of dredged material for the creation of fastlands is considered a viable alternative to ocean disposal. Other potential beneficial uses for dredged material include construction fill, use as cap material in aquatic remediation projects, wetland creation, habitat restoration, landfill daily cover, and recycling into commercial products such as construction aggregate, ceramic tiles, or other building materials. Potentially practicable management options are evaluated as part of the permitting process for individual dredging projects.

EPA has determined that the Northwest Alternative identified in the Final EIS is the environmentally preferred site, and this action proposes to designate the G-DODS as an ocean dredged material disposal site, located approximately 11 nautical miles (21 kilometers) west of Apra Harbor. The circular seafloor boundary of the permanently designated G-DODS would be centered at 13°35.500' North latitude by 144°28.733' West longitude (North American Datum from 1983), with a diameter of 3 nautical miles (5.6 kilometers). However, all dredged material must be discharged within a smaller 3,280 foot (1,000 meter) diameter Surface Disposal Zone (SDZ) at the center of the overall site. The depth of the center of the site is 8,790 feet (2,680 meters). The action provides for adequate, environmentally-acceptable ocean disposal site capacity for suitable

dredged material generated from dredging projects in Apra Harbor and other areas in and around Guam by formally designating the G-DODS.

### C. Disposal Volume Limit

The action is formal designation of the G-DODS managed at a maximum annual dredged material disposal quantity of 1 million cubic yards (764,555 cubic meters) for the ocean disposal of dredged material from Apra Harbor and other areas in and around Guam. The need for ongoing ocean disposal capacity is based on historical dredging volumes from the local port districts, marinas and harbors, and Federal navigational channels, as well as estimates of future average annual dredging.

### D. Site Management and Monitoring Plan

Verification that significant impacts do not occur outside of the disposal site boundaries will be demonstrated through implementation of the Site Management and Monitoring Plan (SMMP) developed as part of the action and included with the Final EIS. The main purpose of the SMMP is to provide a structured framework to ensure that dredged material disposal activities will not unreasonably degrade or endanger human health, welfare, the marine environment, or economic potentialities (Section 103(a) of the MPRSA). Three main objectives for management of the G-DODS are: (1) Protection of the marine environment; (2) beneficial use of dredged material whenever practical; and (3) documentation of disposal activities at the ODMDS.

The EPA and USACE Honolulu District personnel will achieve these objectives by jointly administering the following activities: (1) Regulation and administration of ocean disposal permits; (2) development and maintenance of a site monitoring program; (3) evaluation of permit compliance and monitoring results; and (4) maintenance of dredged material testing and site monitoring records to insure compliance with annual disposal volume targets and to facilitate future revisions to the SMMP.

The SMMP includes periodic physical monitoring to confirm that disposal material is deposited within the seafloor disposal boundary, as well as chemical monitoring to confirm that the sediment actually disposed at the site is in fact suitable (is consistent with the pre-disposal testing results). Other activities implemented through the SMMP to achieve these objectives include: (1) Regulating quantities and types of material to be disposed, including the

time, rates, and methods of disposal; and (2) recommending changes to site use requirements, including disposal amounts or timing, based on periodic evaluation of site monitoring results.

### E. Ocean Dumping Site Designation Criteria

Five general criteria and 11 specific site selection criteria are used in the selection and approval of ocean disposal sites for continued use (40 CFR 228.5 and 40 CFR 228.6(a)).

#### *General Selection Criteria*

1. The dumping of materials into the ocean will be permitted only at sites or in areas selected to minimize the interference of disposal activities with other activities in the marine environment, particularly avoiding areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation.

The ZSF specifically screened the marine environment to avoid areas of existing fisheries or shellfisheries, and regions of heavy commercial or recreational navigation. The alternatives evaluated in the Final EIS each avoid such areas to the maximum extent practicable.

2. Locations and boundaries of disposal sites will be so chosen that temporary perturbations in water quality or other environmental conditions during initial mixing caused by disposal operations anywhere within the site can be expected to be reduced to normal ambient seawater levels or to undetectable contaminant concentrations or effects before reaching any beach, shoreline, marine sanctuary, or known geographically limited fishery or shellfishery.

Both alternative site boundaries are located sufficiently from shore (minimum 11 nautical miles [21 kilometers]) and from geographically limited fishing areas or other sensitive fishery resources to allow water quality perturbations caused by dispersion of disposal material to be reduced to ambient conditions before reaching environmentally sensitive areas.

3. If at any time during or after disposal site evaluation studies, it is determined that existing disposal sites presently approved on an interim basis for ocean dumping do not meet the criteria for site selection set forth in Sections 228.5 through 228.6, the use of such sites will be terminated as soon as suitable alternate disposal sites can be designated.

The interim ODMDS established for Guam does not meet current EPA criteria. It was never used and the designation was terminated.

4. The sizes of the ocean disposal sites will be limited in order to localize for identification and control any immediate adverse impacts and permit the implementation of effective monitoring and surveillance programs to prevent adverse long-range impacts. The size, configuration, and location of any disposal site will be determined as a part of the disposal site evaluation or designation study.

The size and shape of the G-DODS is the minimum necessary to limit environmental impacts to the surrounding area and facilitate surveillance and monitoring operations, determined by computer modeling as described in the Final EIS. In addition, all dredged material discharge must take place within a smaller 3,280 foot (1,000 meter) diameter Surface Disposal Zone (SDZ) at the center of the overall site.

5. EPA will, wherever feasible, designate ocean dumping sites beyond the edge of the continental shelf and other such sites that have been historically used.

The island of Guam is volcanic and not part of a continental land mass and does not have a continental shelf. In the absence of a shelf break, continental shelf can be defined as submerged land between shoreline and depth of 656 ft (200 m). On Guam, this typically occurs within 1 nautical mile (1.9 kilometers) of shore. The slope tends to increase rapidly offshore of Guam and depths can reach 6,000 ft (1.829 km) within 3 nm (5.6 km) (Weston Solutions and Belt Collins 2006). The center point of G-DODS is well beyond the continental shelf, 11 nautical miles (21 kilometers) from the shoreline. No ocean dumping sites have been used for Guam dredging projects.

#### *Specific Selection Criteria*

1. Geographical position, depth of water, bottom topography, and distance from the coast.

Centered at 13°35.500' N and 144°28.733' E and 11.1 nm (20.6 km) from Apra Harbor. The bottom topography at the site is essentially flat and the depth at the center of the site is 8,790 ft (2,680 m).

2. Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases.

Due to the marine open water locale of this site, the presence of aerial, pelagic, or benthic living resources is likely within these areas. However, the site location, water depth and sparse biological communities would minimize any potential impacts to pelagic and benthic resources.

3. Location in relation to beaches and other amenity areas.

The site is greater than 8.0 nm (14.8 km) from the jurisdictional 3nm coastal zone boundary and unlikely to interfere with coastal amenities. This site is not visible from shore. No adverse impacts from dredged material disposal operations are expected on these amenity areas.

4. Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packaging the waste, if any.

Only suitable dredged material may be disposed at the site—no dumping of toxic materials or industrial or municipal waste would be allowed. Dredged material proposed for ocean disposal is subject to strict testing requirements established by the EPA and USACE, and only clean (non-toxic) dredged materials are allowed to be disposed at the G–DODS. Most dredged material to be disposed will likely be fine-grained material (clays and silts) originating from the Inner Apra Harbor area, and coarser-grained material (sands and gravels) originating from the Outer Apra Harbor area. Maximum annual dredged material volumes would be set at 1,000,000 cy (764,555 m<sup>3</sup>). Dredged material is expected to be released from split hull barges.

5. Feasibility of surveillance and monitoring.

EPA (and USACE for Federal projects in consultation with EPA) is responsible for site and compliance monitoring. USCG is responsible for vessel traffic-related monitoring. Monitoring of the disposal site is feasible and facilitated through use of a satellite-based remote tracking system as specified in the SMMP.

6. Dispersal, horizontal transport, and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any.

Oceanographic current velocities are greatest at the surface due to atmospheric circulation (*e.g.*, wind-driven) events, while intermediate and bottom layer currents are much slower, driven by thermohaline circulation and influenced by tidal circulation. Computer modeling, taking into account all current depths and speeds, results in a 2.98 mile diameter footprint of deposits greater than 1 cm.

7. Existence and effects of current and previous discharges and dumping in the area (including cumulative effects).

No evidence of previous dumping activities was observed during field reconnaissance and there are no designated discharge areas in the vicinity. No interactions with other discharges are anticipated due to the

distances from existing discharge points located on the island of Guam.

8. Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance, and other legitimate uses of the ocean.

Minor short-term interferences with commercial and recreational boat traffic may occur due to the transport of dredged material along established shipping lanes to/from G–DODS. There are no oil or other mineral extraction platforms offshore of Guam. The site has not been identified as an area of special scientific importance. There are no fish/shellfish culture enterprises near the site, and transportation to the site avoids any fish aggregation devices (FADs). There may be recreational vessels passing through the site, but the area is not a recreational destination.

9. Existing water quality and ecology of the site as determined by available data or by trend assessment or baseline surveys.

Water quality is excellent with no evidence of degradation. Sediment quality is also typical of unaffected deep-ocean environments removed from pollutant sources. Baseline studies showed no significant benthic fish or shellfish resources in the area.

10. Potentiality for the development or recruitment of nuisance species in the disposal site.

The potential that any transported nuisance species would survive at the ODMDS is low due to depth and temperature differences between the deep ocean disposal site and the likely sources of dredged material in the harbors and other shallower areas in and around Guam.

11. Existence at or in close proximity to the site of any significant natural or cultural features of historical importance.

No culturally significant natural or cultural features, including shipwrecks, were identified in the vicinity of the ODMDS.

## F. Responses to Comments

The draft EIS was published in the **Federal Register** on August 7, 2009. A 45-day public review and comment period was extended to 60 days. Comments were received from 10 individuals, organizations, and agencies during the public review and comment period. In addition to the comments received, a public meeting was held on August 20, 2009, to solicit comments from interested parties. The comments, and associated responses, are summarized topically below.

Comments on the Draft EIS were received by letter, e-mail, and at

meetings during the public review and comment period from various individuals, organizations, and agencies. Many of the comments focused on specific errors, missing information, or outdated information, and the Final EIS was revised and updated accordingly. Other substantive comments and associated responses are summarized topically below. Detailed responses to individual comments are presented in Appendix A of the Final EIS.

## Modeling

(1) *Type of model used*—STFATE model, a standard model used for dredged material dispersion and deposition modeling, has been validated by monitoring studies around the U.S., including at a deepwater site located offshore of San Francisco, California.

(2) *Dredged material dispersing or settling outside of proposed site boundaries, including potential impacts to areas beyond the site boundaries, such as seamounts*—Site boundaries are set such that outside of these boundaries, plumes have already dispersed to background conditions and sediment deposits are indistinguishable from native sediments on the seafloor. No significant effects are expected outside site boundaries, including to seamounts or other major features.

## Site Selection

(1) *Placement of site should be in a deep area away from shallow areas containing corals*—A Zone of Siting Feasibility Study (ZSF) was conducted to evaluate existing physical, geological, and biological features as well as military, commercial, and recreational uses of the marine environment offshore of Guam. This ZSF study eliminated those areas from consideration resulting in the study areas evaluated in the EIS, all of which are in deep water many miles from areas containing corals.

(2) *General site selection criteria for placement of the ocean disposal site beyond the continental shelf should not apply to Guam's tropical setting*—The EIS evaluation noted the absence of continental shelf offshore of Guam and proposed alternative sites on abyssal plains away from submarine slopes, seamounts, or other unique features. While the temperate and tropical ecosystems are different in many aspects in the surface coastal waters, the physical oceanographic environments of the deep ocean are fairly consistent throughout the world, and EPA's site selection criteria remain valid for such areas.

(3) *Historic sites should be removed from consideration*—The EIS evaluation

eliminated the nearshore interim site (which expired in 1997) from consideration.

(4) *Waters near the equator have been scientifically determined to meet these qualifications [location in relation to breeding, spawning, nursery, feeding or passage areas of living resources in adult or juvenile stage] and should be avoided*—The EIS evaluation notes that due to the marine open water locale of this ocean disposal site, the presence of living organisms is likely within this very large region. However, any potential impacts to the overall pelagic and benthic communities would be minimized due to the site location (*i.e.*, very small percentage of area occupied offshore in the region), water depth, absence of unique physical features or habitats, and sparse biological communities.

(5) *Location relative to other amenity areas should not be limited to local jurisdictional areas but be inclusive of all historic fishing areas and Fish Aggregation Device placement areas with the same buffer zone consideration given to coastal areas*—The ZSF study did exclude the FAD areas from further consideration and modeling results indicate that potential impacts from disposal operations are not expected to reach those areas. Pelagic fishing can occur anywhere throughout this very large region, but impacts to pelagic fishing or fishery resources are not anticipated because disposal operations will affect a very small percentage of the area and discharge plumes will disperse to background conditions within the G-DODS boundary.

#### *Beneficial Reuse of Dredged Material*

(1) *Quality of sediments to be considered*—Only suitable (non-toxic) dredged material may be considered for ocean disposal. However, even sediments that are tested and determined to be suitable for ocean disposal must be evaluated for beneficial reuse opportunities such as beach nourishment, habitat restoration, or construction fill before ocean disposal will be permitted. Sediments that are not suitable for ocean disposal may still be considered for reuse in construction fill or landfill cover, *etc.*

(2) *Need for additional dewatering and stockpile sites*—EPA encourages evaluation of creating additional capacity of this nature to increase opportunities for beneficial reuse. However there remains a need for an ocean disposal site to address situations when suitable dredged material cannot be reused because of timing or logistics issues.

#### *Oceanography/Currents*

(1) *One full year of oceanographic current meter data collection is not sufficient to characterize ocean current anomalies seen periodically, so sediment plumes created by surface discharges may occasionally impact resources (pelagic and reef species, including larvae) much farther away than indicated by the computer modeling*—The potential effects of El Niño and La Niña conditions, in addition to local current patterns documented by the current meter study, were considered in the EIS evaluation by modeling “worst case” conditions including “accelerated” current speeds (up to an order of magnitude greater than actually observed in the current meter data records), various current directions, and current reversals in the surface layer (down to 300 meters). The result of this evaluation showed that surface layer dispersion would still be contained within the disposal site boundaries. It also showed that seafloor deposits would not be significantly different, because subsurface currents (which have the predominant effect on overall deposition) are not affected by even these severe surface current anomalies.

(2) *Ocean disposal site impacts to coral reef fish species which begin their life cycle as pelagic larvae, drifting with the currents and returning to the island in juvenile stage*—Pelagic larvae of coral and coral reef fish that may be present far offshore in the vicinity of the ocean disposal site for the most part would not be expected to return to Guam since the prevailing easterly tradewind patterns would result in them drifting farther offshore. Therefore, offshore disposal operations are not expected to have any significant effect on nearshore recruitment of coral or coral reef fish.

#### *Impacts to Corals*

(1) *Disposal should be conducted outside of annual coral spawning period*—This restriction has been included in the SMMP, and conditions on ocean disposal permits must reflect this SMMP requirement.

(2) *Degradation to water quality resulting from dredging project operations (i.e., turbidity, siltation, dredging/filling, debris, fueling of equipment)*—On a project by project basis, best management practices (BMPs) as permit conditions will be implemented as appropriate to minimize impacts associated with dredging operations themselves, including use of silt curtains and other measures to minimize turbidity, avoiding transportation during coral

spawning periods, implementing a debris management plan, and implementing other BMPs as needed. At an ocean disposal site, located at least 11 nautical miles from Guam, offshore disposal operations are not expected to affect corals located in Apra Harbor or along the coast of the island.

#### *Impacts to Fishing*

(1) *Site selection should consider avoidance of historic and current fishing areas, particularly in the vicinity of offshore seamounts such as Perez Bank and Spoon Bank*—The EIS evaluation did consider the locations of prominent submarine features and avoided those locations in selecting the preferred alternative. Furthermore, modeling showed surface plumes dispersed to background conditions within the site boundaries, even using severe (“accelerated”) surface current speeds for worst case scenarios. No significant effects are expected to fishery resources, or to fishing activities, outside the disposal site boundaries.

(2) *The proposed alternative sites are located in areas of upwelling which attract large fish as a result of deepwater nutrients rising to the surface resulting in high plankton production*—Extensive studies of seamounts suggest that Perez Bank and Spoon Bank are not shallow enough features (*i.e.*, summits are not close enough to the sea surface) to create substantial upwelling to provide nutrient benefits to the photic zone above. Measured nutrients were typical of tropical ocean environments and not indicative of upwelling zones.

(3) *Use of bottom trawl to determine species composition does not address impacts to surface fishery*—The EIS field studies were intended to fill in data gaps and to look for unknown or unexpected habitat types or species in the abyssal regions, about which much less is known relative to pelagic habitats where available information suggest that pelagic species are wide-ranging in the marine environment offshore of Guam.

#### *Threatened and Endangered Species*

(1) *The ocean disposal site should be limited in size for monitoring and surveillance but the limits should include an area up to five miles from the center*—The five mile extent is not necessary because the modeling results suggest that surface plumes dissipate to background with the site boundaries (out to 1.5 nautical mile radius) and the deposit footprint on the seafloor is also contained with these boundaries. Disposal operations are expected to result in temporary localized impacts within the site boundaries and to not have significant adverse impacts on



pelagic species which are known to occupy a wide range of the marine environment offshore of Guam.

Nevertheless, when site monitoring is conducted, adjacent areas outside the official site boundary will be included.

(2) *Published scientific reports document valuable marine life deserving of protection at depths along the coast down to 35,000 feet, the latter recognized by Presidential*

*Proclamation*—The EIS evaluation considered important resource areas to avoid for site selection, including the areas identified by the Presidential Proclamation that established the Marianas Trench Marine National Monument which is located several miles to the east of Guam and well out of the influence of ocean dredged material disposal activities west of Guam.

#### *Sediment Testing*

(1) *Dredged material testing is site specific and does not characterize any potential shipboard contamination*—Project site sediments determined to be suitable (non-toxic) for ocean disposal are not expected to become contaminated in the dump scows during transportation to the ocean disposal site because the scows themselves do not contain machinery or other materials that can pollute the sediments in the bin of these vessels. Any disposal vessels that have handled contaminated material prior to ocean disposal operations should have their bins cleaned prior to taking on any clean dredged material.

(2) *The EPA should conduct an extensive series of tests and studies to determine if radiation exists in Apra Harbor waters or its sediments to independently confirm the Navy's claim that the amount of leakage from nuclear-powered vessels [submarines such as the USS Houston] is insignificant*—The designation of an ODMDS does not pre-approve any dredging project sediments for ocean disposal. Each proposed project must subject its sediments to a battery of physical, chemical, and biological tests to determine suitability (non-toxicity) for ocean disposal. Because EPA's Ocean Dumping Regulations explicitly prohibit the disposal or discharge of "high-level radioactive wastes \* \* \* [and] materials produced or used for radiological \* \* \* warfare" at ocean disposal sites [40 CFR 227.5], EPA provided comments on the Joint Guam Program Office (JGPO) draft EIS for the Guam and CNMI military relocation recommending that Dept of Defense summarize past survey data for Apra Harbor. Based on that information, EPA

would require radioactivity assessment as part of pre-dredging sediment sampling where appropriate. Any sediments with elevated radioactivity-proposed to be dredged from Apra Harbor must be managed separately at an appropriate upland location.

#### *Mitigation*

*Mitigation for unavoidable resource losses as a result of ocean disposal of sediments*—Evaluation in the EIS indicates that there may be localized temporary physical impacts within the ocean disposal site boundaries, but benthic community recovery between disposal operations is expected to be rapid, and no long term adverse environmental impacts to the surrounding marine region offshore of Guam are expected. Due to extreme distance offshore and prevailing currents away from Guam, no adverse impacts are expected in Apra Harbor or on the coast.

#### *Disposal Operations*

(1) *Lack of monitoring for transport of dredged material from the dredging site to the ocean disposal site*—The SMMP contains ocean disposal site use requirements that include automated satellite-based tracking of the transportation and disposal phases for each trip to document that no leaking or spilling of dredged material has occurred during transport and that proper placement occurs at the ocean disposal site (discharge only within the Surface Disposal Zone at the center of the overall site).

(2) *Observers should be present to authorize disposal operations after confirming the absence of seabirds, schooling fish, and marine mammals*—The EIS evaluation determined that use of G-DODS would not be expected to result in long term adverse environmental impact to the wide-ranging species of seabirds, schooling fish, and marine mammals in the region offshore of Guam, therefore EPA has not included a requirement for independent on-board observers. Automated compliance monitoring would ensure that disposal operations are restricted to the transportation route to and from the ocean disposal site.

(3) *Compounded environmental impacts of repeated disposals per day if weather days restrict trips to the ocean disposal site to accommodate one million cubic yards per year*—One million cubic yards represents the maximum disposal volume scenario, which is not expected to occur every year. No more than one scow would be allowed in the disposal site at a time, and turbidity impacts following

disposal operations are expected to be localized and temporary (reduced to background in less than four hours).

#### *Cultural/Environmental Justice*

(1) *Documentation that indigenous populace of Guam has long utilized the resources within the waters surrounding Guam for over 3500 years, hence the resource has historic significance and adverse impacts which may alter beneficial use should be [avoided]*—The EIS evaluation shows that there are no historic resources in deepwater in the vicinity of G-DODS, and there would be no expected restrictions on historic uses. As such, there will be no expectation of significant or long term impacts requiring mitigation.

(2) *Designation of an ocean disposal site may result in an environmental injustice perpetrated against minority and low-income populations, in this case, the Chamorro people*—The EIS evaluation does not indicate that designation of an offshore ocean disposal site more than 11 nautical miles offshore will result in any significant or long term impacts on island residents that would require mitigation.

#### *Nuisance Species*

*Presence of nuisance species in Apra Harbor has been documented, and while they are not expected to survive in the deep depths of the ODMDS, it may be possible for these invasive species to float or drift back to Guam or other islands areas, exacerbating the problem*—Prevailing currents to the west would prevent these organisms from drifting back to Apra Harbor or other locations on Guam, and significant dispersion over longer distance would make survival unlikely in sufficiently numbers before encountering another island or land mass to the west.

#### *Vessel Safety and Economics*

*Due to loss of fishing area as a result of designation of ODMDS, the fishing community may be forced to travel to other fishing areas where rescue or other services are not easily available; the change of fishing habits to unfamiliar may be considered a safety at sea issue as well as added expense to travel a greater distance to fish*—The EIS evaluation concludes that the site designation does not restrict fishing in the area and the potential adverse impacts are not expected with regard to vessel safety and operational costs. The lack of impact is expected because the frequency of dredged material transport vessels encountering fishing vessels at the site or along the transit route from Apra Harbor will be much lower than



frequency of encounter with other commercial and recreational vessels, due to the much larger numbers of the latter group.

#### NEPA/Consultation

(1) *Effects of mammals were not fully addressed*, (2) *consultation with Western Pacific Regional Fishery Management Council (WPRFMC)*, and (3) *Essential Fish Habitat*—The WPRFMC is not a formal consultation agency under NEPA. The required consultations were completed with NOAA and US FWS with regard to seabirds, marine mammals, threatened and endangered species, fisheries, and essential fish habitat. These agencies provided recommendations on additional information for EPA's assessment, contained in the draft EIS, to clarify the basis for overall conclusion of no significant impacts resulting from designation of an ODMDS in the marine region offshore of Guam. Additional information and revisions were incorporated into the final EIS in accordance with these recommendations. No significant resource issues were raised by these agencies.

#### G. Regulatory Requirements

##### 1. Consistency With the Coastal Zone Management Act

Consistent with the Coastal Zone Management Act (CZMA), EPA prepared a Coastal Zone Consistency Determination (CZCD) document based on information presented in the site designation DEIS. The CZCD evaluated whether the action—permanent designation of G-DODS would be consistent with the provisions of the CZMA. The CZCD was formally submitted to the Bureau of Statistics and Planning (BSP, Guam's CZM agency) on July 24, 2009. The BSP staff concurred with EPA's CZCD. The Proposed Rule is consistent with the CZMA.

##### 2. Endangered Species Act Consultation

During development of the site designation EIS, EPA consulted with the National Oceanic and Atmospheric Administration (NOAA) Fisheries and the U.S. Fish and Wildlife Service (FWS) pursuant to the provisions of the Endangered Species Act (ESA), regarding the potential for designation and use of the ocean disposal sites to jeopardize the continued existence of any Federally listed species. This consultation process is fully documented in the site designation EIS. NOAA and FWS concluded that proposed designation and use of the disposal site for disposal of dredged

material meeting the criteria for ocean disposal would not jeopardize the continued existence of any Federally listed species.

#### H. Administrative Review

##### 1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant", and therefore subject to Office of Management and Budget (OMB) review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Proposed Rule should have minimal impact on State, local or Tribal governments or communities. Consequently, EPA has determined that this Proposed Rule is not a "significant regulatory action" under the terms of Executive Order 12866.

##### 2. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the Proposed Rule would not establish or modify any information or record-keeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

##### 3. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (RFA) provides that whenever an agency

promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). The site designation and management actions would only have the effect of setting maximum annual disposal volume and providing a continuing disposal option for dredged material. Consequently, EPA's action will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the Proposed Rule will not have a significant economic impact on a substantial number of small entities.

##### 4. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104-4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and Tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any year.

This Proposed Rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or Tribal governments or the private sector. The Proposed Rule would only provide a continuing disposal option for dredged material. Consequently, it imposes no new enforceable duty on any State, local or Tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Proposed Rule.

##### 5. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship

between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This Proposed Rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13132 does not apply to this Proposed Rule.

**6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments**

Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure “meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.” This Proposed Rule does not have Tribal implications, as specified in Executive Order 13175. The Proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, Executive Order 13175 does not apply to this Proposed Rule.

**7. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks**

This Executive Order (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA. This Proposed Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

**8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use Compliance With Administrative Procedure Act**

This Proposed Rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. The Proposed Rule would only have the effect of setting maximum annual disposal volumes and providing a continuing disposal option for dredged material. Thus, EPA concluded that this Proposed Rule is not likely to have any adverse energy effects.

**9. National Technology Transfer Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This Proposed Rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**10. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low Income Populations**

Executive Order 12898 (59 FR 7629) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect

the level of protection provided to human health or the environment. EPA has assessed the overall protectiveness of designating the disposal Sites against the criteria established pursuant to the MPRSA to ensure that any adverse impact to the environment will be mitigated to the greatest extent practicable.

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: April 6, 2010.

**Jared Blumenfeld,**

*Regional Administrator, EPA Region IX.*

In consideration of the foregoing, EPA is proposing to amend part 228, chapter I of title 40 of the Code of Federal Regulations as follows:

**PART 228—[AMENDED]**

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (l)(12) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

\* \* \* \* \*

(l) \* \* \*

(12) Guam Deep Ocean Disposal Site (G–DODS)—Region IX.

(i) *Location:* Center coordinates of the circle-shaped site are: 13° 35.500' North Latitude by 144° 28.733' West Longitude (North American Datum from 1983), with a radius of 3 nautical miles (5.6 kilometers).

(ii) *Size:* 7.1 square nautical miles (24.3 square kilometers).

(iii) *Depth:* 8,790 feet (2,680 meters).

(iv) Use Restricted to Disposal of: Dredged materials.

(v) *Period of Use:* Continuing use.

(vi) *Restrictions:* Disposal shall be limited to a maximum of 1 million cubic yards (764,555 cubic meters) per calendar year of dredged materials that comply with EPA's Ocean Dumping Regulations; disposal operations shall be conducted in accordance with requirements specified in a Site Management and Monitoring Plan developed by EPA and USACE, to be reviewed periodically, at least every 10 years.

\* \* \* \* \*

[FR Doc. 2010–8515 Filed 4–13–10; 8:45 am]

**BILLING CODE 6560–50–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 372****[EPA-HQ-TRI-2009-0844; FRL-9137-7]****RIN 2025-AA27****Hydrogen Sulfide; Community Right-to-Know Toxic Chemical Release Reporting; Extension of Comment Period****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Intent to consider lifting administrative stay; opportunity for public comment; extension of comment period.

**SUMMARY:** On February 26, 2010, EPA issued a **Federal Register** document concerning the Agency's intent to consider lifting the Administrative Stay of the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 toxic chemical release reporting requirements for hydrogen sulfide (Chemical Abstracts Service Number (CAS No.) 7783-06-4) (75 FR 8889). The purpose of today's action is to inform interested parties that, in response to a request for an extension, EPA is extending the comment period by 15 days until May 12, 2010. The comment period was previously scheduled to close on April 27, 2010.

**DATES:** Comments must be received on or before May 12, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-TRI-2009-0844, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [oei.docket@epa.gov](mailto:oei.docket@epa.gov).

- *Mail:* Office of Environmental Information (OEI) Docket, Environmental Protection Agency, Mail

Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. EPA-HQ-TRI-2009-0844. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, avoid any form of encryption, and be free of any defects or viruses.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the OEI Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

**FOR FURTHER INFORMATION CONTACT:** Daniel R. Bushman, Environmental Analysis Division, Office of Information Analysis and Access (2842T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-0743; fax number: 202-566-0677; e-mail: [bushman.daniel@epa.gov](mailto:bushman.daniel@epa.gov), for specific information on this document. For general information on EPCRA section 313, contact the Emergency Planning and Community Right-to-Know Hotline, toll free at (800) 424-9346 or (703) 412-9810 in Virginia and Alaska or toll free, TDD (800) 553-7672, <http://www.epa.gov/epaoswer/hotline/>.

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does This Action Apply to Me?*

You may be potentially affected by this action if you manufacture, process, or otherwise use hydrogen sulfide. Potentially affected categories and entities may include, but are not limited to:

Category	Examples of potentially affected entities
Industry .....	Facilities included in the following NAICS manufacturing codes (corresponding to SIC codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211112*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512220, 512230*, 519130*, 541712*, or 811490*. *Exceptions and/or limitations exist for these NAICS codes.

Category	Examples of potentially affected entities
Federal Government .....	Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (correspond to SIC 12, Coal Mining (except 1241)); or 212221, 212222, 212231, 212234, 212299 (correspond to SIC 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221119, 221121, 221122, 221330 (Limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (correspond to SIC 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (Limited to facilities previously classified in SIC 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC 5171, Petroleum Bulk Terminals and Plants); or 562112 (Limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (Limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 <i>et seq.</i> ) (correspond to SIC 4953, Refuse Systems). Federal facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Some of the entities listed in the table have exemptions and/or limitations regarding coverage, and other types of entities not listed in the table could also be affected. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372 subpart B of Title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding “**FOR FURTHER INFORMATION CONTACT**” section.

#### *B. How Should I Submit CBI to the Agency?*

Do not submit CBI information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

## **II. Background Information**

### *A. What Does This Document Do and What Action Does This Document Affect?*

This document extends the comment period for EPA’s February 26, 2010, **Federal Register** document concerning EPA’s intent to consider lifting the Administrative Stay of the EPCRA section 313 reporting requirements for hydrogen sulfide (75 FR 8889).

### *B. Why and for How Long Is EPA Extending the Comment Period?*

EPA has received a request on behalf of a number of groups to extend the comment period on EPA’s intent to consider lifting the Administrative Stay of the EPCRA section 313 reporting requirements for hydrogen sulfide. The groups requesting an extension are the American Coke and Coal Chemicals Institute, American Forest and Paper Association, American Petroleum Institute, Asphalt Institute, Carbon Disulfide Coalition, Corn Refiners Association and The Sulphur Institute. These groups have requested additional time to review relevant information and prepare comments. EPA has considered this request and has determined that extending the comment period is an appropriate action. Therefore, EPA is extending the comment period on the February 26, 2010, **Federal Register** document by 15 days until May 12, 2010. All comments should be submitted following the detailed instructions as provided in the “**ADDRESSES**” section of this document, and in Unit I. of the “**SUPPLEMENTARY INFORMATION**” section of this document. All comments must be received by May 12, 2010.

### **List of Subjects in 40 CFR Part 372**

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: April 7, 2010.

**Richard A. Martin,**

*Acting Director, Office of Information Analysis and Access.*

[FR Doc. 2010–8527 Filed 4–13–10; 8:45 am]

**BILLING CODE 6560–50–P**

## **DEPARTMENT OF HOMELAND SECURITY**

### **Federal Emergency Management Agency**

#### **44 CFR Part 67**

[Docket ID FEMA–2010–0003; Internal Agency Docket No. FEMA–B–1110]

### **Proposed Flood Elevation Determinations**

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this document is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before July 13, 2010.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community’s map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1110, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation

Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact

stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities.

These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action

under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	^ Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Sumter County, Alabama, and Incorporated Areas				
Factory Creek (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 1,600 feet upstream of County Road 21.	None	+120	Unincorporated Areas of Sumter County.
Fenache Creek (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 0.5 mile downstream of County Road 4.	None	+126	Unincorporated Areas of Sumter County.
Folsom Branch (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 500 feet upstream of Fulson Brand Road.	None	+120	Town of Gainesville.
High Run (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 2.3 miles upstream of the confluence with the Tombigbee River.	None	+103	Unincorporated Areas of Sumter County.
Jones Creek (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 2,100 feet upstream of County Road 20.	None	+114	Town of Epes.
Noxubee River (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 7.3 miles upstream of County Road 85.	None	+122	Unincorporated Areas of Sumter County.
Sandy Creek .....	Approximately 1 mile downstream of Alabama Highway 28.	None	+115	Unincorporated Areas of Sumter County.
	Approximately 1,673 feet downstream of East Park Road.	None	+117	
Sucarnoochee River .....	Approximately 1.6 mile downstream of railroad .....	None	+115	Unincorporated Areas of Sumter County.
Tombigbee River .....	Approximately 1.4 mile upstream of U.S. Route 11 ....	None	+120	Town of Epes.
	Approximately 29.4 miles downstream of U.S. Route 11.	None	+95	

Flooding source(s)	Location of referenced elevation	^ Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 12.7 miles upstream of the Gainesville Dam.	None	+130	
Tombigbee River Trib 13 (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 585 feet downstream of Port of Unnamed Road.	None	+108	Unincorporated Areas of Sumter County.
Tombigbee River Trib 16 (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 740 feet downstream of Port of Epes Highway.	None	+113	Unincorporated Areas of Sumter County.
Tombigbee River Trib 7 (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 102 miles downstream of Pine Top Road.	None	+96	Unincorporated Areas of Sumter County.
Tombigbee River Trib 8 (Backwater effects from Tombigbee River).	From the confluence with the Tombigbee River to approximately 0.6 mile upstream of Trails End Road.	None	+101	Unincorporated Areas of Sumter County.
Toomsba Creek .....	Approximately 0.7 mile downstream of railroad .....	None	+148	Unincorporated Areas of Sumter County.
Whiterock Creek (Backwater effects from Sucarnoochee River).	Approximately 750 feet upstream of U.S. Route 11 ....	None	+164	Unincorporated Areas of Sumter County.
	From the confluence with the Sucarnoochee River to approximately 1,073 feet downstream of Arrington Street.	None	+116	

\* National Geodetic Vertical Datum.

+North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\*BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Town of Epes

Maps are available for inspection at 40 Carrol Street, Epes, AL 35464.

##### Town of Gainesville

Maps are available for inspection at 9380 State Street, Gainesville, AL 35464.

##### Unincorporated Areas of Sumter County

Maps are available for inspection at 318 Washington Street, Livingston, AL 35470.

#### Bureau County, Illinois, and Incorporated Areas

Illinois River .....	Approximately 1.38 miles downstream of I-180 .....	+463	+462	City of Spring Valley, Unincorporated Areas of Bureau County, Village of Bureau Junction, Village of De Pue.
	Approximately 2.05 miles upstream of State Highway 89.	+462	+463	

\* National Geodetic Vertical Datum.

+North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\*BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Spring Valley

Maps are available for inspection at City Hall, 215 North Greenwood Street, Spring Valley, IL 61362.

##### Unincorporated Areas of Bureau County

Maps are available for inspection at the Bureau County Courthouse, 700 South Main Street, Princeton, IL 61356.

##### Village of Bureau Junction

Maps are available for inspection at the Village Hall, 101 East Nebraska Street, Bureau, IL 61315.

Flooding source(s)	Location of referenced elevation	^ Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

**Village of De Pue**

Maps are available for inspection at the Village Hall, 111 West 2nd Street, De Pue, IL 61322.

**Rowan County, Kentucky, and Incorporated Areas**

Cave Run Lake .....	Entire shoreline within Rowan County .....	None	+765	Unincorporated Areas of Rowan County.
Ramey Creek (Backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to approximately 1,940 feet upstream of the confluence with Cave Run Lake.	None	+765	Unincorporated Areas of Rowan County.
Scott Creek (Backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to approximately 0.9 mile upstream of KY-801.	None	+765	Unincorporated Areas of Rowan County.
Warix Run (Backwater effects from Cave Run Lake).	From the confluence with Cave Run Lake to approximately 1,720 feet upstream of the confluence with Cave Run Lake.	None	+765	Unincorporated Areas of Rowan County.

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\*BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

**ADDRESSES****Unincorporated Areas of Rowan County**

Maps are available for inspection at 627 East Main Street, Morehead, KY 40351.

**Richland Parish, Louisiana, and Incorporated Areas**

Big Creek .....	Just upstream of Burke Road .....	None	+78	Unincorporated Areas of Richland Parish.
	Approximately 1 mile upstream of Par 1158 Road .....	None	+84	
Burns Bayou .....	Approximately 1,860 feet upstream of Collins Lane ....	None	+76	Unincorporated Areas of Richland Parish.
	Just upstream of U.S. Route 80 .....	None	+79	
Burns Bayou Tributary No. 1	At the lower confluence with Burns Bayou .....	None	+77	Town of Rayville, Unincorporated Areas of Richland Parish.
	At the upper confluence with Burns Bayou .....	None	+78	
Burns Bayou Tributary No. 2	Approximately 1,860 feet upstream of Collins Lane ....	None	+76	Unincorporated Areas of Richland Parish.
	Approximately 590 feet upstream of Linda Street .....	None	+78	
Cypress Creek .....	At the confluence with Big Creek .....	None	+79	Unincorporated Areas of Richland Parish.
	Just upstream of Smalling Road .....	None	+85	
Hurricane Creek .....	Just downstream of I-20 .....	None	+79	Unincorporated Areas of Richland Parish.
	Just upstream of Fortenberry Road .....	None	+85	
Little Creek .....	Just downstream of I-20 .....	None	+78	Unincorporated Areas of Richland Parish.
	Just upstream of Maple Street .....	None	+80	
Stream No. 2 .....	Just downstream of Farm Road .....	None	+78	Town of Rayville, Unincorporated Areas of Richland Parish.
	Just upstream of Greer Road .....	+79	+80	
West Fork Creek .....	Just downstream of State Highway 183 .....	None	+81	Unincorporated Areas of Richland Parish.
	Just downstream of Jaggers Lane .....	None	+83	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

Flooding source(s)	Location of referenced elevation	^ Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

\*\*BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Town of Rayville

Maps are available for inspection at the Town Hall, 109 Benedette Street, Rayville, LA 71269.

##### Unincorporated Areas of Richland Parish

Maps are available for inspection at 708 Julia Street, Suite B103C, Rayville, LA 71269.

#### Cheboygan County, Michigan, and Incorporated Areas

Black Lake .....	Entire shoreline .....	None	+616	Township of Waverly.
Black River .....	Approximately 2.69 miles downstream of North Black River Road.	None	+612	Township of Aloha.
	Approximately 1.13 mile downstream of North Black River Road.	None	+613	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\*BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Township of Aloha

Maps are available for inspection at 3012 North M-33, Cheboygan, MI 49721.

##### Township of Waverly

Maps are available for inspection at 11133 Twin School Road, Onaway, MI 49765.

#### Benton County, Minnesota, and Incorporated Areas

Mississippi River .....	Approximately 1.30 miles downstream of 125th Street	None	+1027	City of Rice.
	Approximately 1.23 miles upstream of 125th Street ....	None	+1030	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\*BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Rice

Maps are available for inspection at 205 Main Street East, Rice, MN 56367.

#### Franklin County, North Carolina, and Incorporated Areas

Basin 10, Stream 14 .....	At the Franklin/Wake county boundary .....	+306	+307	Unincorporated Areas of Franklin County.
	Approximately 300 feet downstream of Bethlehem Church Road (State Route 1103).	None	+387	
Bear Swamp Creek .....	At the confluence with the Tar River .....	+212	+210	Unincorporated Areas of Franklin County.
	Approximately 0.5 mile upstream of Dyking Road (State Route 1235).	+212	+211	
Big Branch Creek .....	At the confluence with Cedar Creek .....	+193	+191	Unincorporated Areas of Franklin County.



Flooding source(s)	Location of referenced elevation	^ Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Billys Creek .....	Approximately 0.3 mile upstream of the confluence with Cedar Creek.	+193	+191	Unincorporated Areas of Franklin County.
	At the confluence with the Tar River .....	+226	+225	
Brandy Creek Tributary .....	Approximately 2.5 miles upstream of Montgomery Road.	None	+272	Town of Youngsville, Unincorporated Areas of Franklin County.
	Approximately 850 feet downstream of Fleming Road (State Route 1132).	None	+333	
Buffalo Creek South .....	Approximately 1,000 feet upstream of Fleming Road (State Route 1132).	None	+352	Unincorporated Areas of Franklin County.
	At the confluence with the Tar River .....	+213	+212	
Cedar Creek .....	Approximately 0.4 mile upstream of Perry's Chapel Church Road (State Route 1003).	None	+285	Unincorporated Areas of Franklin County.
	At the confluence with the Tar River .....	+193	+191	
Cedar Creek Tributary .....	Approximately 1.2 mile upstream of Pocokomoke Road (State Route 1127).	None	+438	Unincorporated Areas of Franklin County.
	Approximately 400 feet upstream of the confluence with Cedar Creek.	+373	+374	
Cedar Creek Tributary 3 .....	Approximately 0.3 mile upstream of the confluence with Cedar Creek.	None	+386	Unincorporated Areas of Franklin County.
	Approximately 0.4 mile downstream of Long Mill Road (State Route 1134).	None	+381	
Cedar Creek Tributary 3A .....	Approximately 200 feet upstream of Long Mill Road (State Route 1134).	None	+402	Unincorporated Areas of Franklin County.
	Approximately 700 feet upstream of the confluence with Cedar Creek Tributary 3.	+352	+355	
Crooked Creek .....	Approximately 0.5 mile upstream of the confluence with Cedar Creek Tributary 3.	None	+397	Unincorporated Areas of Franklin County.
	At the confluence with the Tar River .....	+174	+172	
Cypress Creek .....	At the downstream side of Cheves Road (State Route 1731).	+174	+172	Unincorporated Areas of Franklin County.
	At the confluence with the Tar River .....	+170	+171	
Fox Creek .....	Approximately 1.2 mile upstream of the confluence with the Tar River.	+170	+171	Town of Louisburg, Unincorporated Areas of Franklin County.
	At the confluence with the Tar River .....	+203	+200	
Franklinton Branch .....	Approximately 0.3 mile upstream of State Highway 56	+203	+202	Town of Franklinton, Unincorporated Areas of Franklin County.
	Approximately 0.3 mile upstream of the confluence with Cedar Creek.	+266	+265	
Horse Creek .....	Approximately 1.3 mile upstream of Lane Store Road (State Route 1118).	None	+310	Unincorporated Areas of Franklin County.
	Approximately 230 feet upstream of Nottingham Court (State Route 1177).	None	+387	
Horse Creek Tributary 1 .....	Approximately 0.5 mile upstream of John Mitchell Road (State Route 1140).	None	+430	Unincorporated Areas of Franklin County.
	Approximately 250 feet upstream of Keighlely Forest Drive.	None	+344	
Horse Creek Tributary 2 .....	Approximately 1.0 mile upstream of Holden Road (State Route 1147).	None	+401	Unincorporated Areas of Franklin County.
	Approximately 200 feet upstream of the confluence with Horse Creek.	+381	+382	
Jumping Run .....	Approximately 0.9 mile upstream of John Mitchell Road.	None	+434	Unincorporated Areas of Franklin County.
	At the confluence with the Tar River .....	+195	+192	
Little River Tributary 1 .....	Approximately 750 feet downstream of East River Road (State Route 1600).	+195	+194	Unincorporated Areas of Franklin County.
	Approximately 1,350 feet upstream of the confluence with the Little River.	+327	+328	

Flooding source(s)	Location of referenced elevation	^ Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Little River Tributary 2 .....	Approximately 0.4 mile upstream of the confluence with the Little River.	None	+335	Unincorporated Areas of Franklin County.
	Approximately 800 feet upstream of the confluence with the Little River.	+328	+329	
	Approximately 300 feet upstream of Williamston Ridge Drive.	None	+361	
Little River Tributary 3 .....	Approximately 450 feet downstream of Darius Pearce Road (State Route 1101).	+329	+330	Unincorporated Areas of Franklin County.
	Approximately 0.3 mile upstream of North Carolina Highway 98.	None	+360	
Little River Tributary 3A .....	At the confluence with the Little River Tributary 3 .....	None	+338	Unincorporated Areas of Franklin County.
Little River Tributary 3B .....	Approximately 0.4 mile upstream of the confluence with Little River Tributary 3.	None	+350	Unincorporated Areas of Franklin County.
	At the confluence with Little River Tributary 3A .....	None	+338	
	Approximately 250 feet upstream of North Carolina Highway 98.	None	+358	
Little River Tributary 6 .....	Approximately 675 feet downstream of Allens Lane ...	None	+355	Unincorporated Areas of Franklin County.
	Approximately 365 feet upstream of Allens Lane .....	None	+364	
Little River Tributary 8 .....	Approximately 700 feet upstream of the confluence with the Little River.	+371	+372	Unincorporated Areas of Franklin County.
	Approximately 600 feet upstream of Oak Grove Church Road.	None	+386	
	At the confluence with the Tar River .....	+213	+212	
Lynch Creek .....	Approximately 0.5 mile upstream of Dyking Road (State Route 1235).	+213	+212	Unincorporated Areas of Franklin County.
	At the confluence with the Tar River .....	+242	+241	
	Approximately 1.2 mile upstream of the confluence with the Tar River.	+242	+241	
Richland Creek .....	Approximately 850 feet upstream of the confluence with Richland Creek Tributary 2.	+302	+301	Town of Youngsville, Unincorporated Areas of Franklin County.
	Approximately 0.3 mile upstream of Holden Road .....	None	+364	
Smith Creek (Basin 6, Stream 1).	At the Franklin/Wake county boundary .....	None	+327	Unincorporated Areas of Franklin County.
	Approximately 0.6 mile upstream of the Franklin/Wake county boundary.	None	+353	
	At the confluence with the Tar River .....	+200	+198	
Sycamore Creek .....	Approximately 100 feet downstream of North Carolina Highway 56.	+200	+199	Unincorporated Areas of Franklin County.
	At the Franklin/Nash county boundary .....	+170	+171	
	At the confluence with Middle Creek .....	+242	+241	
Tar River Tributary 1 .....	At the confluence with the Tar River .....	+197	+195	Unincorporated Areas of Franklin County.
	Approximately 0.9 mile upstream of the confluence with the Tar River.	+197	+196	
	At the confluence with the Tar River .....	+234	+237	
Taylors Branch .....	Approximately 250 feet upstream of West Green Street.	None	+311	Town of Franklinton, Unincorporated Areas of Franklin County.
	At the confluence with Lynch Creek .....	+213	+212	
	Approximately 0.6 mile upstream of Dyking Road (State Route 1235).	+213	+212	
Wolfpen Branch .....	At the confluence with the Tar River .....	+197	+195	Unincorporated Areas of Franklin County.

Flooding source(s)	Location of referenced elevation	^ Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.9 mile upstream of the confluence with the Tar River.	+197	+196	

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Town of Bunn

Maps are available for inspection at the Town Hall, 601 Main Street, Bunn, NC 27508.

##### Town of Franklinton

Maps are available for inspection at the Franklinton Municipal Building, 7 West Mason Street, Franklinton, NC 27525.

##### Town of Louisburg

Maps are available for inspection at the Town Hall, 110 West Nash Street, Louisburg, NC 27549.

##### Town of Youngsville

Maps are available for inspection at the Town Hall, 118 North Cross Street, Youngsville, NC 27596.

##### Unincorporated Areas of Franklin County

Maps are available for inspection at the Franklin County Planning Office, 215 East Nash Street, Louisburg, NC 27549.

#### Vance County, North Carolina, and Incorporated Areas

Buffalo Creek North .....	At the confluence with the Tar River .....	+228	+229	Unincorporated Areas of Vance County.
	Approximately 300 feet downstream of Dick Smith Road.	+228	+229	
Tabbs Creek .....	At the confluence with the Tar River .....	+233	+236	Unincorporated Areas of Vance County.
	Approximately 1,700 feet upstream of Egypt Mountain Road.	+235	+236	
Tar River .....	At the Franklin/Vance county boundary .....	+228	+229	Unincorporated Areas of Vance County.
	At the confluence with Middle Creek .....	+242	+241	

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+ North American Vertical Datum.

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#### ADDRESSES

##### Unincorporated Areas of Vance County

Maps are available for inspection at the Vance County Planning and Development Office, 156 Church Street, Suite 003, Henderson, NC 27536.

#### Potter County, Pennsylvania (All Jurisdictions)

Freeman Run .....	Approximately 0.7 mile downstream of State Route 607 (Main Street).	None	+1311	Township of Portage.
	Approximately 0.6 mile downstream of State Route 607 (Main Street).	None	+1316	
Oswayo Creek .....	Approximately 1.8 mile upstream of State Route 44 ...	None	+1567	Township of Clara.
	Approximately 2.2 miles upstream of State Route 44	None	+1572	

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+ North American Vertical Datum.

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		Effective	Modified	

\*\*BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Township of Clara

Maps are available for inspection at the Clara Township Building, 566 Clara Road, Shinglehouse, PA 16748.

##### Township of Portage

Maps are available for inspection at the Portage Township Hall, 23 State Street, Austin, PA 16720.

#### Fairfield County, South Carolina, and Incorporated Areas

McCulley Creek .....	Approximately 1,370 feet downstream of State Road S-20-56.	None	+350	Town of Winnsboro, Unincorporated Areas of Fairfield County.
	Approximately 560 feet downstream of Dogwood Avenue.	None	+396	
Sand Creek .....	Approximately 1.4 mile downstream of Pumphouse Road.	None	+378	Town of Winnsboro, Unincorporated Areas of Fairfield County.
	Approximately 169 feet downstream of U.S. Route 321.	None	+522	
Sand Creek Tributary 10 .....	At the confluence with Sand Creek .....	None	+429	Unincorporated Areas of Fairfield County.
	Approximately 0.7 mile upstream of the confluence with Sand Creek.	None	+489	
Sand Creek Tributary 11 .....	At the confluence with Sand Creek .....	None	+449	Town of Winnsboro.
	Approximately 1,473 feet upstream of U.S. Route 321	None	+544	

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### Town of Winnsboro

Maps are available for inspection at the Town Hall, 117 South Congress Street, Winnsboro, SC 29180.

##### Unincorporated Areas of Fairfield County

Maps are available for inspection at the Town Hall, 117 South Congress Street, Winnsboro, SC 29180.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 31, 2010.

**Sandra K. Knight,**

*Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010-8459 Filed 4-13-10; 8:45 am]

**BILLING CODE 9110-12-P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Federal Emergency Management Agency

##### 44 CFR Part 67

[Docket ID FEMA-2010-0003; Internal Agency Docket No. FEMA-B-1111]

##### Proposed Flood Elevation Determinations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Proposed rule.

**SUMMARY:** Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this document is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show

evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

**DATES:** Comments are to be submitted on or before July 13, 2010.

**ADDRESSES:** The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA-B-1111, to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**FOR FURTHER INFORMATION CONTACT:**

Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646-2820, or (e-mail) [kevin.long@dhs.gov](mailto:kevin.long@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified

BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

*National Environmental Policy Act.* This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

*Regulatory Flexibility Act.* As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601-612, a regulatory flexibility analysis is not required.

*Executive Order 12866, Regulatory Planning and Review.* This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

*Executive Order 13132, Federalism.* This proposed rule involves no policies that have federalism implications under Executive Order 13132.

*Executive Order 12988, Civil Justice Reform.* This proposed rule meets the applicable standards of Executive Order 12988.

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

**PART 67—[AMENDED]**

1. The authority citation for part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 67.4 [Amended]**

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Carlisle County, Kentucky, and Incorporated Areas				
Back Slough (Backwater effects from Mississippi River).	From the confluence with Mayfield Creek to approximately 3.2 miles upstream of the confluence with Mayfield Creek.	None	+328	Unincorporated Areas of Carlisle County.
Gray Creek (Backwater effects from Mississippi River).	From the confluence with Mayfield Creek to approximately 1,142 feet upstream of U.S. Route 51.	None	+329	Unincorporated Areas of Carlisle County.
Gray Creek Tributary 2 (Backwater effects from Mississippi River).	From the confluence with Gray Creek to approximately 0.68 mile upstream of the confluence with Gray Creek.	None	+329	Unincorporated Areas of Carlisle County.
Hurricane Creek (Backwater effects from Mississippi River).	From the confluence with Mayfield Creek to approximately 0.91 mile upstream of the confluence with Mayfield Creek.	None	+329	Unincorporated Areas of Carlisle County.
Mayfield Creek .....	At the confluence with the Mississippi River .....	None	+329	Unincorporated Areas of Carlisle County.
Mayfield Creek Tributary 23 (Backwater effects from Mayfield Creek).	Approximately 0.62 mile upstream of U.S. Route 62 ..	None	+352	Unincorporated Areas of Carlisle County.
	From the confluence with Mayfield Creek to approximately 0.63 mile upstream of the confluence with Mayfield Creek.	None	+346	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Mayfield Creek Tributary 6 (Backwater effects from Mississippi River).	From the confluence with Mayfield Creek to approximately 1.92 mile upstream of the confluence with Mayfield Creek.	None	+329	Unincorporated Areas of Carlisle County.
Mayfield Creek Tributary 6.3 (Backwater effects from Mississippi River).	From the confluence with Mayfield Creek Tributary 6 to approximately 0.8 mile upstream of the confluence with Mayfield Creek Tributary 6.	None	+329	City of Bardwell, Unincorporated Areas of Carlisle County.
Mississippi River .....	Approximately 2,656 feet upstream of the confluence with Sandy Branch in Hickman County (at county boundary).	None	+325	Unincorporated Areas of Carlisle County.
	Approximately 158 feet upstream of the confluence with Mayfield Creek.	None	+329	
Sandy Branch (Backwater effects from Mississippi River).	From the confluence with Sandy Branch Tributary 2 to approximately 3.2 miles upstream of the confluence with Sandy Branch Tributary 2.	None	+326	Unincorporated Areas of Carlisle County.
Sandy Branch Tributary 2 (Backwater effects from Mississippi River).	From the confluence with Sandy Branch to approximately 1 mile upstream of the confluence with Sandy Branch.	None	+325	Unincorporated Areas of Carlisle County.
Truman Creek (Backwater effects from Mississippi River).	From the confluence with Mayfield Creek to approximately 1.9 mile upstream of the confluence with Mayfield Creek.	None	+329	Unincorporated Areas of Carlisle County.
West Fork Mayfield Creek (Backwater effects from Mississippi River).	From the confluence with Mayfield Creek to approximately 1,548 feet upstream of U.S. Route 62.	None	+329	Unincorporated Areas of Carlisle County.
Wilson Creek (Backwater effects from Mayfield Creek).	From the confluence with Mayfield Creek to approximately 1,707 feet upstream of the confluence with Mayfield Creek.	None	+334	Unincorporated Areas of Carlisle County.

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+ North American Vertical Datum.

# Depth in feet above ground.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Bardwell

Maps are available for inspection at 225 Front Street, Bardwell, KY 42023.

##### Unincorporated Areas of Carlisle County

Maps are available for inspection at 70 West Court Street, Bardwell, KY 42023.

#### Estill County, Kentucky, and Incorporated Areas

Big Doe Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 769 feet downstream of Roberts Road.	None	+632	Unincorporated Areas of Estill County.
Billey Fork (Backwater effects from Kentucky River).	From the confluence with Millers Creek to approximately 1,390 feet upstream of CSX Abandoned Railroad.	None	+635	Unincorporated Areas of Estill County.
Blue Run (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 1.1 mile upstream of the confluence with the Kentucky River.	None	+621	Unincorporated Areas of Estill County.
Buck Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.4 mile downstream of Little Buck Creek Road.	None	+636	Unincorporated Areas of Estill County.
Buck Creek Tributary 1 (Backwater effects from Kentucky River).	From the confluence with Buck Creek to approximately 685 feet upstream of Little Buck Creek Road.	None	+635	Unincorporated Areas of Estill County.
Calloway Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 1,708 feet downstream of Dry Branch Road.	None	+626	Unincorporated Areas of Estill County.
Calloway Creek Tributary 1 (Backwater effects from Kentucky River).	From the confluence with Calloway Creek to approximately 0.7 mile upstream of the confluence with Calloway Creek.	None	+627	Unincorporated Areas of Estill County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Campbell Creek (Backwater effects from Kentucky River).	From the confluence with Cow Creek to approximately 0.7 mile upstream of Sid Griffie Road.	None	+632	Unincorporated Areas of Estill County.
Caney Branch (Backwater effects from Kentucky River).	From the confluence with the Red River to approximately 0.6 mile upstream of the confluence with the Red River.	None	+605	Unincorporated Areas of Estill County.
Clear Creek (Backwater effects from Kentucky River).	From the confluence with Station Camp Creek to approximately 0.4 mile downstream of Clearcreek Road.	None	+630	Unincorporated Areas of Estill County.
Cow Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 1,307 feet downstream of Cow Creek Road.	None	+632	Unincorporated Areas of Estill County.
Crooked Creek (Backwater effects from Kentucky River).	From the confluence with Station Camp Creek to approximately 1.3 miles upstream of Crooked Creek Road.	None	+631	Unincorporated Areas of Estill County.
Drowning Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to just downstream of Richmond Road.	None	+620	Unincorporated Areas of Estill County.
Furnace Fork (Backwater effects from Kentucky River).	From the confluence with Millers Creek to approximately 966 feet upstream of Cobhill Road.	None	+635	Unincorporated Areas of Estill County.
Hinton Branch (Backwater effects from Kentucky River).	From the confluence with Crooked Creek to approximately 0.5 mile upstream of Newton Circle.	None	+631	Unincorporated Areas of Estill County.
Hoys Fork (Backwater effects from Kentucky River).	From the confluence with Crooked Creek to approximately 0.6 mile upstream of Dug Hill Road.	None	+631	Unincorporated Areas of Estill County.
Kentucky River .....	Approximately at the confluence with the Red River ...	None	+605	City of Irvine, City of Ravenna,
	Approximately 8.7 miles upstream of the confluence with Buck Creek.	None	+645	Unincorporated Areas of Estill County.
Kentucky River Trib 4 (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 1.0 mile upstream of the confluence with the Kentucky River.	None	+627	Unincorporated Areas of Estill County.
Little Doe Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 532 feet upstream of Little Doe Creek Road.	None	+632	Unincorporated Areas of Estill County.
Long Branch II (Backwater effects from Kentucky River).	From the confluence with Furnace Fork to approximately 0.4 mile upstream of CSX Abandoned Railroad.	None	+635	Unincorporated Areas of Estill County.
Millers Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to the confluence with Billey Fork.	None	+635	Unincorporated Areas of Estill County.
Noland Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 364 feet downstream of Noland Creek Road.	None	+613	Unincorporated Areas of Estill County.
Polecat Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.6 mile downstream of CSX Railroad.	None	+624	Unincorporated Areas of Estill County.
Possum Run (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.9 mile downstream of Opossum Run Road.	None	+621	Unincorporated Areas of Estill County.
Red River (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.4 mile upstream of the confluence with Caney Branch.	None	+605	Unincorporated Areas of Estill County.
South Fork Noland Creek (Backwater effects from Kentucky River).	From the confluence with Noland Creek to approximately 0.8 mile upstream of the confluence with Noland Creek.	None	+613	Unincorporated Areas of Estill County.
Station Camp Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 1.6 mile upstream of the confluence with Crooked Creek.	None	+631	Unincorporated Areas of Estill County.
Sudders Fork (Backwater effects from Kentucky River).	From the confluence with Millers Creek to approximately 0.4 mile upstream of CSX Abandoned Railroad.	None	+635	Unincorporated Areas of Estill County.
Sweet Lick Branch (Backwater effects from Kentucky River).	From the confluence with White Oak Creek to approximately 669 feet upstream of Main Street.	None	+630	Unincorporated Areas of Estill County.
White Oak Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 795 feet upstream of White Oak Road.	None	+630	Unincorporated Areas of Estill County.

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+ North American Vertical Datum.

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Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Irvine

Maps are available for inspection at 101 Chestnut Street, Irvine, KY 40336.

##### City of Ravenna

Maps are available for inspection at 620 Main Street, Ravenna, KY 40472.

##### Unincorporated Areas of Estill County

Maps are available for inspection at 130 Main Street, Irvine, KY 40336.

#### Fulton County, Kentucky, and Incorporated Areas

Bayou de Chien (Backwater effects from Mississippi River).	From the confluence with the Mississippi River to 0.5 mile upstream of the confluence with Little Bayou de Chien.	None	+321	Unincorporated Areas of Fulton County.
Harris Fork Creek Tributary 16 (Backwater effects from Harris Fork Creek).	At the confluence with Harris Fork Creek .....	+366	+365	City of Fulton, Unincorporated Areas of Fulton County.
	Approximately 0.4 mile upstream of the confluence with Harris Fork Creek.	+366	+368	
Little Bayou de Chien (Backwater effects from Mississippi River).	From the confluence with the Mississippi River to approximately 2,140 feet downstream of KY-94.	None	+321	Unincorporated Areas of Fulton County.
Little Bayou de Chien Tributary 29 (Backwater effects from Mississippi River).	From the confluence with Little Bayou de Chien to approximately 0.54 mile upstream of the confluence with Little Bayou de Chien.	None	+321	Unincorporated Areas of Fulton County.
Little Bayou de Chien Tributary 35 (Backwater effects from Mississippi River).	From the confluence with Little Bayou de Chien to approximately 655 feet upstream of the confluence with Little Bayou de Chien.	None	+321	Unincorporated Areas of Fulton County.
Little Bayou de Chien Tributary 9 (Backwater effects from Mississippi River).	From the confluence with Little Bayou de Chien to approximately 0.7 mile upstream of the confluence with Little Bayou de Chien.	None	+321	Unincorporated Areas of Fulton County.
Little Mud Creek (Backwater effects from Mississippi River).	From the confluence with Bayou de Chien to approximately 0.5 mile upstream of KY-94.	None	+320	Unincorporated Areas of Fulton County.
Little Mud Creek Tributary 1 (Backwater effects from Mississippi River).	From the confluence with Little Mud Creek to approximately 1.2 miles upstream of the confluence with Little Mud Creek.	None	+320	Unincorporated Areas of Fulton County.
Mississippi River .....	Approximately at the Fulton County boundary with the State of Tennessee.	None	+299	Unincorporated Areas of Fulton County, City of Hickman.
	Approximately 5.7 miles upstream of the confluence with Bayou de Chien.	None	+321	
Mud Creek (Backwater effects from Mississippi River).	From the confluence with Bayou de Chien to approximately 2,300 feet upstream of the confluence with Mud Creek Tributary 13.	None	+320	Unincorporated Areas of Fulton County.
Mud Creek Tributary 10 (Backwater effects from Mississippi River).	From the confluence with Mud Creek to approximately 0.9 mile upstream of the confluence with Mud Creek.	None	+320	Unincorporated Areas of Fulton County.
Mud Creek Tributary 12 (Backwater effects from Mississippi River).	From the confluence with Mud Creek to approximately 350 feet upstream of KY-1127.	None	+320	Unincorporated Areas of Fulton County.
Mud Creek Tributary 13 (Backwater effects from Mississippi River).	From the confluence with Mud Creek to approximately 1,775 feet upstream of the confluence with Mud Creek.	None	+320	Unincorporated Areas of Fulton County.



Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Mud Creek Tributary 3 (Backwater effects from Mississippi River).	From the confluence with Mud Creek to approximately 0.83 mile upstream of KY-94.	None	+320	Unincorporated Areas of Fulton County.
Mud Creek Tributary 4 (Backwater effects from Mississippi River).	From the confluence with Mud Creek to approximately 1 mile upstream of KY-2140.	None	+320	Unincorporated Areas of Fulton County.

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Fulton

Maps are available for inspection at 101 Nelson Tripp Place, Fulton, KY 42041.

##### City of Hickman

Maps are available for inspection at 1812 South 7th Street, Hickman, KY 42350.

##### Unincorporated Areas of Fulton County

Maps are available for inspection at 2216 Myron Cory Drive, Hickman, KY 42050.

#### Garrard County, Kentucky, and Incorporated Areas

Canoe Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.6 mile upstream of the confluence with the Kentucky River.	None	+567	Unincorporated Areas of Garrard County.
Davis Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.4 mile upstream of the confluence with the Kentucky River.	None	+570	Unincorporated Areas of Garrard County.
Dix River (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 269 feet downstream of the confluence with Dix River Tributary 82.	None	+553	Unincorporated Areas of Garrard County.
Kentucky River .....	Approximately at the confluence with the Dix River ....	None	+553	Unincorporated Areas of Garrard County.
Kentucky River Tributary 40 (Backwater effects from Kentucky River).	Approximately at the confluence with Paint Lick Creek From the confluence with the Kentucky River to approximately 932 feet upstream of Old Lexington Road East.	None None	+573 +565	Unincorporated Areas of Garrard County.
Paint Lick Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 1.9 mile upstream of the confluence with the Kentucky River.	None	+573	Unincorporated Areas of Garrard County.
Scotch Fork (Backwater effects from Kentucky River).	From the confluence with Sugar Creek to approximately 656 feet downstream of Poor Ridge Pike.	None	+570	Unincorporated Areas of Garrard County.
Sugar Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.7 mile upstream of the confluence with Scotch Fork.	None	+570	Unincorporated Areas of Garrard County.
White Oak Creek (Backwater effects from Kentucky River).	From the confluence with the Kentucky River to approximately 0.7 mile upstream of the confluence with Kentucky River.	None	+563	Unincorporated Areas of Garrard County.

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

# Depth in feet above ground.

^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	

## ADDRESSES

## Unincorporated Areas of Garrard County

Maps are available for inspection at 15 Public Square, Lancaster, KY 40444.

## McLean County, Kentucky, and Incorporated Areas

Black Lake Creek (Backwater effects from Green River).	From the confluence with Cypress Creek to approximately 1 mile upstream of Coffman Schoolhouse Road.	None	+393	Unincorporated Areas of McLean County.
Buck Creek (Backwater effects from Green River).	From the confluence with West Fork Buck Creek to approximately 275 feet upstream of Atherton Road.	None	+391	Unincorporated Areas of McLean County.
Cypress Creek Tributary 32 (Backwater effects from Green River).	From the confluence with Cypress Creek to approximately 2 miles upstream of the confluence with Cypress Creek.	None	+393	Unincorporated Areas of McLean County.
Cypress Creek Tributary 36 (Backwater effects from Green River).	From the confluence with Cypress Creek to approximately 1.8 miles upstream of KY-85.	None	+391	Unincorporated Areas of McLean County.
Cypress Creek Tributary 59 (Backwater effects from Green River).	From the confluence with Cypress Creek to approximately 490 feet upstream of Bell Road.	None	+389	Unincorporated Areas of McLean County.
Delaware Creek (Backwater effects from Ohio River).	From the confluence with the Green River to approximately 380 feet upstream of KY-593.	None	+386	Unincorporated Areas of McLean County.
Green River .....	Approximately 1.9 mile downstream of the confluence with Green River Tributary 33.	+386	+387	City of Livermore, Town of Calhoun, Unincorporated Areas of McLean County.
	Approximately 2.5 miles downstream of KY-85 .....	+394	+393	
Green River Tributary 19 (Backwater effects from Green River).	From the confluence with the Green River to approximately 0.73 mile downstream of KY-136.	None	+389	Unincorporated Areas of McLean County.
Green River Tributary 27 (Backwater effects from Green River).	From the confluence with the Green River to approximately 1,270 feet upstream of KY-256.	None	+388	Unincorporated Areas of McLean County.
Green River Tributary 33 (Backwater effects from Green River).	From the confluence with the Green River to 1.1 miles upstream of the confluence with the Green River.	+386	+387	Unincorporated Areas of McLean County.
Hanley Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 0.54 mile upstream of KY-136.	None	+390	Unincorporated Areas of McLean County.
Long Falls Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 2,330 feet upstream of KY-815.	None	+389	Unincorporated Areas of McLean County.
Long Falls Creek Tributary 18 (Backwater effects from Green River).	From the confluence with Long Falls Creek to approximately 0.59 mile upstream of the confluence with Long Falls Creek.	None	+389	Unincorporated Areas of McLean County.
Long Falls Creek Tributary 22 (Backwater effects from Green River).	From the confluence with Long Falls Creek to approximately 2,400 feet downstream of KY-140.	None	+389	Unincorporated Areas of McLean County.
Long Falls Creek Tributary 23 (Backwater effects from Green River).	From the confluence with Long Falls Creek to approximately 0.88 mile upstream of Leachman Schoolhouse Road.	None	+389	Unincorporated Areas of McLean County.
Pond Drain (Backwater effects from Green River).	From the confluence with Pond Drain Tributary 1 to approximately 1.3 mile upstream of the confluence with Pond Drain Tributary 1.	None	+390	Unincorporated Areas of McLean County.
Pond Drain Tributary 1 (Backwater effects from Green River).	From the confluence with Pond Drain to approximately 656 feet downstream of Adams Schoolhouse Road.	None	+389	Unincorporated Areas of McLean County.
Pond Drain Tributary 2 (Backwater effects from Green River).	From the confluence with Pond Drain to approximately 400 feet upstream of KY-81.	None	+390	Unincorporated Areas of McLean County.
Pond Drain Tributary 2.1 (Backwater effects from Green River).	From the confluence with Pond Drain Tributary 2 to approximately 1,890 feet upstream of the confluence with Pond Drain Tributary 2.	None	+390	Unincorporated Areas of McLean County.
Pond River Tributary 107 (Backwater effects from Green River).	From the McLean County boundary to approximately 266 feet downstream of Branch Schoolhouse Road.	None	+389	Unincorporated Areas of McLean County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ^ Elevation in meters (MSL)		Communities affected
		Effective	Modified	
West Fork Buck Creek (Backwater effects from Green River).	From the confluence with the Green River to approximately 2,200 feet downstream of KY-250.	None	+390	Unincorporated Areas of McLean County.
West Fork Buck Creek Tributary 10 (Backwater effects from Green River).	From the confluence with West Fork Buck Creek to 0.6 mile upstream of the confluence with West Fork Buck Creek.	None	+390	Unincorporated Areas of McLean County.
Yellow Creek (Backwater effects from Green River).	From the confluence with Yellow Creek Tributary 6 to 0.65 mile upstream of the confluence with Yellow Creek Tributary 6.	None	+388	Unincorporated Areas of McLean County.
Yellow Creek Tributary 6 (Backwater effects from Green River).	From the confluence with Yellow Creek to approximately 1,265 feet upstream of the confluence with Yellow Creek.	None	+388	Unincorporated Areas of McLean County.

\* National Geodetic Vertical Datum.

+ North American Vertical Datum.

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^ Mean Sea Level, rounded to the nearest 0.1 meter.

\*\* BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Kevin C. Long, Acting Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

#### ADDRESSES

##### City of Livermore

Maps are available for inspection at 105 West 3rd Street, Livermore, KY 42352.

##### Town of Calhoun

Maps are available for inspection at 325 West 2nd Street, Calhoun, KY 42327.

##### Unincorporated Areas of McLean County

Maps are available for inspection at 210 Main Street, Calhoun, KY 42327.

(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: March 31, 2010.

**Sandra K. Knight,**

*Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.*

[FR Doc. 2010-8461 Filed 4-13-10; 8:45 am]

**BILLING CODE 9110-12-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

#### 45 CFR Parts 146 and 148

#### Premium Review Process; Request for Comments Regarding Section 2794 of the Public Health Service Act

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Request for information.

**SUMMARY:** This document is a request for comments regarding Section 1003 of the Patient Protection and Affordable Care Act (PPACA), Pub. L. 111-148, which

added Section 2794 to the Public Health Service Act (the PHS Act). Section 2794 of the PHS Act requires the Secretary to work with States to establish an annual review of unreasonable rate increases, to monitor premium increases and to award grants to States to carry out their rate review process. The Department of Health and Human Services (HHS) invites public comments in advance of future rulemaking.

**DATES:** Submit written or electronic comments by May 14, 2010.

**ADDRESSES:** Written comments, identified by DHHS-2010-PRR, may be submitted to the Department of HHS by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Written comments (one original and two copies) may be mailed to: Department of Health and Human Services, Attention: DHHS-2010-PRR, Hubert H. Humphrey Building, Room 445-G, 200 Independence Avenue, SW., Washington, DC 20201.

• *Hand or courier delivery:* Comments may be delivered to Room

445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the DHHS-2010-PRR drop box located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain proof of filing by stamping in and retaining an extra copy of the comments being filed.

*Inspection of Public Comments.* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all electronic comments received before the close of the comment period on the following public Web site as soon as possible after they have been received: <http://www.regulations.gov>. Follow the search instructions on that Web site to view public comments.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at 200 Independence Avenue, SW., Washington, DC 20201, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call 202-690-5480.

**FOR FURTHER INFORMATION CONTACT:**

Sharon Arnold, Centers for Medicare and Medicaid Services, Department of Health and Human Services, at (202) 690-5480. *Customer Service*

*Information:* Individuals interested in obtaining information about the Patient Protection and Affordable Care Act may visit the Department of Health and Human Services' Web site (<http://www.healthreform.gov>).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 1003 of the Patient Protection and Affordable Care Act (PPACA), Public Law 111-148, enacted on March 23, 2010, added Section 2794 of the Public Health Service Act (PHS Act). In 1996, Congress enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which added title XXVII to the PHS Act, and parallel provisions to the Employee Retirement Income Security Act of 1974 (ERISA), and the Internal Revenue Code of 1986. These amendments provided for, among other things, improved portability and continuity of coverage with respect to health insurance coverage in the group and individual insurance markets, and group health plan coverage provided in connection with employment. Title XXVII of the PHS Act is codified at 42 U.S.C. 300gg, *et seq.* PPACA expanded Title XXVII of the PHS Act, redesignated several sections, and created new requirements affecting the individual and group markets. In particular, among other provisions, Section 2794 requires health insurance issuers offering individual or group coverage to submit to the Secretary and the relevant State a justification for an unreasonable premium increases.

*A. Initial Premium Review Process, Public Reporting, and Justification of Unreasonable Premium Increases for Individual and Group Coverage*

Section 2794(a)(1) requires the Secretary, in conjunction with States, to establish a process for the annual review, beginning with the 2010 plan year, of unreasonable increases in premiums for health insurance coverage. Additionally, Section

2794(a)(2) provides that this process shall require health insurance issuers to submit to the Secretary and the relevant State a justification for an unreasonable premium increase prior to the implementation of the increase, and prominently post this information on their Internet Web sites. Section 2794(a)(2) also requires the Secretary to ensure the public disclosure of information relating to these increases and justifications for all health insurance issuers.

*B. Continuing Premium Review Process*

For plan years beginning in 2014, Section 2794(b)(2)(A) requires the Secretary, in conjunction with States to monitor premium increases of health insurance coverage offered through an Exchange and outside of an Exchange, consistent with the provisions of Section 2794(a)(2). (In this context, the terms "State Exchange" and "Exchange" refer to the State health insurance exchanges established under PPACA).

Section 2794(b)(1) also requires that, as a condition of receiving a grant from the Secretary to assist in carrying out the premium review process, States shall provide the Secretary with information about trends in premium increases in health insurance coverage in premium rating areas in the State; and make recommendations about whether particular health insurance issuers should be excluded from participation in the Exchange based on a pattern or practice of excessive or unjustified premium increases.

Additionally, Section 2794(b)(2)(B) requires States to take into account any excess of premium growth outside of the Exchange, as compared to the rate of premium growth inside the Exchange, in determining whether to offer qualified health plans in the large group market through an Exchange.

*C. Availability of Grants to States in Support of the Premium Review Process*

Section 2794(c)(1) directs the Secretary to carry out a program to award grants to States during the five-year period beginning with fiscal year 2010 to assist in carrying out the requirements of Section 2794(a). For example, these grants can be used to assist States in reviewing and, if appropriate under State law, approving premium increases for health insurance coverage; and providing information and recommendations to the Secretary under Section 2794(b)(1).

Section 2794(c)(2)(A) provides for an appropriation to the Secretary of \$250,000,000 out of all funds in the Treasury not otherwise appropriated, to be available for expenditure for the State

grants. Section 2794(c)(2)(C) requires the Secretary to establish a formula for determining the amount of any grant to a State under this subsection that considers the number of plans of health insurance coverage offered in each State and the population of the State (with the requirement that no State qualifying for a grant shall receive less than \$1,000,000 or more than \$5,000,000 for a grant year).

Additionally, Section 2794(c)(2)(B) provides that if these appropriated amounts are not fully obligated under the above mentioned State grants by the end of fiscal year 2014, any remaining funds are to remain available to the Secretary for grants to States for planning and implementing the insurance reforms and consumer protections under Part A of the PPACA.

*D. Effective Dates*

Section 1004(a) of the PPACA provides that the provisions of Section 2794 of the PHS Act shall become effective for fiscal years beginning with fiscal year 2010.

**II. Solicitation of Comments**

*A. Information Regarding Regulatory Guidance*

The Department is inviting public comment to aid in the development of regulations regarding Section 2794 of the PHS Act, and is especially interested in the perspectives of researchers, policy analysts, health insurance issuers, and States. To assist interested parties in responding, this request for comments describes specific areas in which the Department is particularly interested.

This request for comments identifies a wide range of issues that are of interest to the Department. Commenters should use the questions below to assist in providing the Department with useful information relating to the development of regulations regarding Section 2794 of the PHS Act. However, it is not necessary for commenters to address every question. Individuals, groups, and organizations interested in providing information relating to one or more of the topics discussed herein may do so at their discretion by following the above mentioned instructions.

*Specific Areas in which the Department is interested include the following:*

**1. Rate Filings and Review of Rate Increases**

The Act requires the Secretary, in conjunction with States, to establish a process for the annual review of unreasonable increases in health

insurance premiums. A justification for an unreasonable premium increase is also required.

a. To what extent do States currently have processes in place to review premium rates and rate increases?

1. What kinds of methodologies are used by States to determine whether or not to approve or modify a rate or a rate increase? What are the pros and cons of these differing methodologies?

2. Are special considerations needed for certain kinds of plans (for example, HMOs, high deductible health plans, new policies, and closed blocks of business)? If so, what special considerations are typically employed and under what circumstances?

b. Where applicable, do health insurance issuers currently provide actuarial memorandums and supporting documentation relating to premium rate calculations, such as trend assumptions, for all premium rates and rate increases that are submitted, and/or for all premium rates and rate increases that are reviewed?

1. How is medical trend typically calculated?

2. Are specific exhibits, worksheets or other documents typically required? If so, are these documents generally submitted to the State Insurance Department directly, and if so, in what format?

3. To what extent do issuers use the following categories to develop justifications for rate increases: cost-sharing, enrollee population including health risk status, utilization increases, provider prices, administrative costs, medical loss ratios, reserves, and surplus levels? Are there other factors that are considered?

c. What level(s) of aggregation (for example, by policy form level, by plan type, by line of business, or by company) are generally used for rate filings, rate approvals, and any corrective actions? What are the pros and cons associated with each level of aggregation in these various contexts?

d. What requirements do States currently have relating to medical trend and rating calculations? What are the pros and cons of these different requirements, and what additional requirements could potentially be set?

1. Do States generally allow enrollees under the same policy form to be further subdivided for purposes of calculating medical trends and rates?

2. Do States generally allow enrollees under different policy forms to be grouped together for these calculations, and if so, how?

## 2. Defining Unreasonable Premium Rate Increases

The Act provides that the initial and continuing rate review process under Section 2794 is only to be undertaken for unreasonable premium rate increases.

a. In States that currently have rate review processes, are all rates or rate increases generally reviewed? If so, for what markets and/or products? If not, what criteria do these States typically use when determining which rates or rate increases will be reviewed? To what extent do States require that these reviews take place before the proposed rate increases can be implemented?

b. To what extent have States developed definitions of what constitutes a premium rate increase warranting review?

## 3. Public Disclosure

The Act requires that health insurance issuers prominently post the justification for an unreasonable premium increase on their Internet Web sites prior to implementation of the increase.

a. To what extent is information on premium rates and premium rate increases, and related justifications, currently made available to the public?

1. To what extent are annual summaries of premium rate increases currently made available to the public on State or consumer Web sites, and/or made available by request? Where available, to what extent is this information generally provided by policy form, type of product, line of business, or some other grouping?

2. To what extent are rate filings with actuarial justification and supporting documentation generally made available to the public? In what format(s) are rate filings currently made available to the public? What format(s) would be most useful to the public?

3. What kinds of supporting documentation are necessary for consumers to interpret these kinds of information?

b. What kinds of information relating to justification for an unreasonable premium increase could potentially be made available?

## 4. Exclusion From Exchange

For plan years beginning in 2014, States receiving grants in support of the rate review process must make recommendations, as appropriate, to the State Exchange about whether particular insurance issuers should be excluded from participation in the Exchange based on a pattern or practice of excessive or unjustified premium increases.

a. To what extent have States developed definitions of what constitutes an excessive or unjustified premium rate increase and/or a pattern or practice of such increases? How could a pattern or practice of excessive unjustified premium increases be defined in this context, and what are some of the pros and cons of the various approaches that are available?

b. What criteria could be established to determine whether insurers have engaged in a pattern or practice of excessive or unjustified premium increases?

## 5. Grant Allocation

The Act directs the Secretary to allocate \$250 million in grant money to States to carry out the rate review process.

a. What factors could be considered in grant allocation?

b. What weighting could be given to different factors and why?

## *B. Information Regarding Economic Analysis, Paperwork Reduction Act, and Regulatory Flexibility Act*

Executive Order 12866 requires an assessment of the anticipated costs and benefits of a significant rulemaking action and the alternatives considered, using the guidance provided by the Office of Management and Budget. These costs and benefits are not limited to the Federal government, but pertain to the affected public as a whole. Under Executive Order 12866, a determination must be made whether implementation of Section 2794 of the PHS Act will be economically significant. A rule that has an annual effect on the economy of \$100 million or more is considered economically significant.

In addition, the Regulatory Flexibility Act may require the preparation of an analysis of the economic impact on small entities of proposed rules and regulatory alternatives. An analysis under the Regulatory Flexibility Act must generally include, among other things, an estimate of the number of small entities subject to the regulations (for this purpose, plans, employers, and issuers and, in some contexts small governmental entities), the expense of the reporting, recordkeeping, and other compliance requirements (including the expense of using professional expertise), and a description of any significant regulatory alternatives considered that would accomplish the stated objectives of the statute and minimize the impact on small entities.

The Paperwork Reduction Act requires an estimate of how many "respondents" will be required to comply with any "collection of

information” requirements contained in regulations and how much time and cost will be incurred as a result. A collection of information includes recordkeeping, reporting to governmental agencies, and third-party disclosures.

Furthermore, Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of \$135 million.

The Department is requesting comments that may contribute to the analyses that will be performed under these requirements, both generally and with respect to the following specific areas:

1. What policies, procedures, or practices of health insurance issuers and States may be affected by Section 2794 of the PHS Act?

a. What direct or indirect costs and benefits would result?

b. Which stakeholders will be impacted by such benefits and costs?

c. Are these impacts likely to vary by insurance market, plan type, or geographic area?

2. Are there unique costs and benefits for small entities subject to Section 2794 of the PHS Act?

a. What special consideration, if any, is needed for these health insurance issuers or plans that they sell?

b. What costs and benefits have issuers experienced in implementing requirements relating to rate review under State insurance laws or otherwise?

3. Are there additional paperwork burdens related to Section 2794 of the PHS Act, and, if so, what estimated hours and costs are associated with those additional burdens?

Signed at Washington, DC this 8th day of April, 2010.

**Donald B. Moulds,**

*Acting Assistant Secretary for Planning and Evaluation, Office of the Secretary, Department of Health and Human Services.*

[FR Doc. 2010-8600 Filed 4-12-10; 10:15 am]

**BILLING CODE 4150-03-P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 10-487; MB Docket No. 10-64; RM-11598]

### FM TABLE OF ALLOTMENTS, Milford, Utah

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division seeks comments on a petition filed by Canyon Media Group, LLC, authorized assignee of Station KCLS(FM), Channel 269C2, Pioche, Nevada, requesting the substitution of Channel 288C for vacant Channel 285C at Milford, Utah. The reference coordinates for Channel 288C at Milford are 38-31-11 NL and 113-17-07 WL, at a site 27.6 kilometers (17.2 miles) northwest of Milford.

**DATES:** Comments must be filed on or before May 17, 2010, and reply comments on or before June 1, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve the petitioner, as follows: Brendan Holland, Esq., Davis Wright Tremaine LLP, 1919 Pennsylvania Avenue, N.W., Suite 200, Washington, D.C. 20006.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau, (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's notice of Proposed Rule Making, MB Docket No. 10-64, adopted March 24, 2010, and released March 26, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or via the company's website, <http://www.bcpweb.com>.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden “for small business concerns with fewer than 25 employees,” pursuant to the Small

Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

**Electronic Filers:** Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. For submitting comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, “get form.” A sample form and directions will be sent in response.

**For Paper Filers:** Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours

at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

[Include background information and necessary detail in language easily understood by the reader. Use descriptive headings to highlight topics or organize text. See DDH, pages 1-12 and 1-13.]

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

##### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 285C at Milford and by adding Channel 288C at Milford.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 2010-8448 Filed 4-13-10; 8:45 am]

**BILLING CODE 6712-01-S**

#### FEDERAL COMMUNICATIONS COMMISSION

##### 47 CFR Part 73

[DA 10-488; MB Docket No. 10-63; RM-11597]

##### FM Table of Allotments, Amboy, California

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division seeks comments on a petition filed by Sunnylands Broadcasting, LLC, proposing to allot Channel 284A at Amboy, California. The proposed reference coordinates for Channel 284A at Amboy are 34-36-00 NL and 115-40-52 WL, with a site restriction of 7.5 kilometers (4.6 miles) northeast of the community.

**DATES:** Comments must be filed on or before May 17, 2010, and reply comments on or before June 1, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. In addition to filing comments with the FCC interested parties should serve the petitioner, as follows: Peter Gutmann, Esq., Womble Carlyle Sandridge & Rice, PLLC, 1401 I Street, N.W. – 7th Floor, Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Dupont, Media Bureau, (202) 418-7072.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's notice of Proposed Rule Making, MB Docket No. 10-63, adopted March 24, 2010, and released March 26, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or via the company's website, <http://www.bcpweb.com>.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 does not apply to this proceeding.

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comment may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's

eRulemaking Portal, or (3) by filing paper copies. See Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1988).

Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/> or the Federal eRulemaking Portal: <http://www.regulations.gov>. For submitting comments, filers should follow the instructions provided on the website.

For ECFS filer, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filer must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to [ecfs@fcc.gov](mailto:ecfs@fcc.gov), and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.

For Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rule making number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelope must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Government Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Amboy, Channel 284A.

Federal Communications Commission.

**John A. Karousos,**  
*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 2010-8449 Filed 4-13-10; 8:45 am]

**BILLING CODE 6712-01-S**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 10-489; MB Docket No. 10-65; RM-11595]

#### FM TABLE OF ALLOTMENTS, Jewett, Texas

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Audio Division seeks comments on a petition filed by Charles Crawford, proposing the allotment of FM Channel 232A at Jewett, Texas, as a first local service. The reference coordinates for Channel 232A at Jewett are 31-18-56 NL and 96-03-32 WL.

**DATES:** Comments must be filed on or before May 17, 2010, and reply comments on or before June 1, 2010.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Andrew J. Rhodes, Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of

Proposed Rule Making, MB Docket No. 10-65, adopted March 24, 2010, and released March 26, 2010. The full text of this Commission document is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW, Room CY-B402, Washington, DC 20554, 800-378-3160 or via the company's website, <http://www.bcpweb.com>.

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, therefore, it does not contain any proposed information collection burden "for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR Section 1.1204(b) for rules governing permissible ex parte contact. For information regarding proper filing procedures for comments, see 47 CFR 1.4125 and 1.420.

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

#### PART 73 – RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

#### § 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Jewett, Channe 232A.

Federal Communications Commission.

**John A. Karousos,**  
*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 2010-8450 Filed 4-13-10; 8:45 am]

**BILLING CODE 6712-01-S**

#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 90

[WP Docket No. 07-100, FCC 10-36]

#### Wireless Technologies, Devices, and Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** In this document, the Federal Communications Commission (Commission) seeks additional comments in the ongoing proceeding to propose miscellaneous changes to its rules that govern new and existing wireless technologies, devices, and services. Specifically, the Commission seeks comment regarding particular changes to its rules that were suggested in response to a previous decision in this proceeding, or resulting issues that arose subsequently. This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new wireless technologies, devices and services, and are easy for the public to understand.

**DATES:** Submit comments on or before May 14, 2010, and reply comments are due on or before June 1, 2010.

**ADDRESSES:** You may submit comments, identified by WP Docket No. 07-100; FCC 10-36, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone 202-418-0530 or TTY: 202-418-0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Rodney P. Conway, at [Rodney.Conway@FCC.gov](mailto:Rodney.Conway@FCC.gov), Wireless



Telecommunications Bureau, (202) 418–2904, or TTY (202) 418–7233.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Further Notice of Proposed Rulemaking* ("Second FNPRM") in WP Docket No. 07–100, FCC 10–36, adopted on March 3, 2010, and released March 10, 2010. The Commission seeks comment regarding particular changes to its rules where we solicited comment on other potential rule changes to a *Notice* published at 72 FR 32582, June 13, 2007, in this proceeding, that were suggested in response to, or arose subsequently. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: [www.fcc.gov](http://www.fcc.gov). Alternative formats are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

1. Part 90 contains the rules for both the Private Land Mobile Radio (PLMR) Services and certain Commercial Mobile Radio Services (CMRS). PLMR licensees generally do not provide for-profit communications services. Some examples of PLMR licensees are public safety agencies, businesses that use radio only for their internal operations, utilities, transportation entities, and medical service providers. CMRS licensees, by comparison, do provide for-profit communications services, such as paging and Specialized Mobile Radio services that offer customers communications that are interconnected to the public switched network.

2. *WMTS Secondary Operations.* WMTS service rules do not currently authorize WMTS systems to operate on a secondary basis on those portions of the 1427–1432 MHz shared band where non-medical telemetry is primary, and commenters disagree regarding whether the rules should be amended to permit such operations. The current record, however, does not provide an adequate basis for us to adopt appropriate technical requirements. We therefore seek further comment on whether secondary WMTS operations should be permitted. Specifically, we seek comment on what particular technical rules would be needed to prevent unwanted interference and ensure patient safety. We also seek comment on

whether WMTS equipment manufacturers or vendors should be required to notify users that installed equipment will operate on a secondary basis to non-medical telemetry. Commenters also are asked to address whether certain functions (e.g., monitoring of specific types of patients or specific medical information) are so critical to patient safety that they should be conducted only on frequencies where WMTS has primary status. In addition, we seek comment on whether there is sufficient primary spectrum in the three WMTS frequency bands to meet users' communications needs without resorting to secondary operations.

3. *End of Train Devices.* Section 90.238(e) of the Commission's rules limits telemetry operations in the 450–470 MHz band to two watts transmitter output power. Association of American Railroads (AAR) is concerned that the two-watt limit offers little margin for degradation of the communications link, especially on longer trains (some of which are 7,000 to 8,000 feet long). In order to minimize the possibility of communications link failure for EOT devices, AAR requests that the Commission's rules be amended to allow EOT devices to operate with up to eight watts transmitter output power. AAR, which is the Commission's certified frequency coordinator for frequency pair 452/457.9375 MHz and the adjacent frequencies, argues that the potential for causing interference to railroad operations is minimal. We tentatively conclude that the Commission's rules should be modified to accommodate the operational needs of EOT devices, and we seek comment on this proposal. We also seek comment on whether a 6 dB increase in power is necessary, or whether EOT devices can operate properly with a smaller increase.

4. *Trunking Rules.* Since its adoption in 1997, § 90.187 has been the subject of several decisions clarifying or interpreting it. We tentatively agree with Land Mobile Communications Council (LMCC) that we should revise the rule, and related definitions in § 90.7 of the Commission's rules, to make the rule clearer. For example, we propose to clarify that § 90.187 neither requires applicants for decentralized trunked systems to obtain consent from affected licensees, nor permits decentralized trunked systems to operate without monitoring. We also tentatively agree with LMCC that the rule currently contains unnecessary provisions that should be removed. For example, § 90.187(b)(2)(v) provides that a potential applicant that disagrees with a frequency coordinator's determination

that the proposed operations would cause objectionable interference may ask the Commission to overturn the coordinator's determination, but § 90.175(a) already offers the same opportunity. Whether an incumbent is an "affected licensee" also depends on spectral separation. LMCC seeks to expand the definition of "affected licensee" in the context of proposed 12.5 kilohertz and 6.25 kilohertz bandwidth stations, depending on the authorized bandwidth of the incumbent station. It argues that these changes are necessary in order to avoid interference to licensees that migrate from 25 kilohertz bandwidth to 12.5 kilohertz or narrower bandwidth pursuant to the Commission's narrowbanding mandate. LMCC also suggests that these spectral separations be expressed in table form, rather than the current text descriptions. We seek comment on these proposals. Section 90.187 does not discuss how to account for systems that have no permanent base stations. LMCC now suggests that the rule be revised to treat mobile-only stations as follows: for systems where the authorized operating area is defined as a radius around geographic coordinates, contour calculations should be based on a mobile unit operating at the geographic coordinates; while systems where the license does not specify geographic coordinates for the authorized operating area (e.g., licenses authorizing operation within a particular county or state) would not be deemed "affected licensees." We are not persuaded that LMCC's recommendations represent the optimal solution because placing the mobile units at the center coordinates tends to understate the system's potential to cause or receive interference. In addition, we see no basis for affording differing levels of protection depending on whether the mobile-only operating area is defined by a point-radius or a geographic unit. Consequently, while we seek comment on LMCC's proposals, we also ask commenters to address whether other feasible methods might more accurately approximate a mobile-only system's contours, such as using the boundary of the authorized operating area as the service contour and a specified distance therefrom as the interference contour. Finally, LMCC appears to suggest removing current § 90.187(d), which permits potential applicants for centralized trunked operations to file written notice with a frequency coordinator, which will notify the other frequency coordinators, none of whom may accept a conflicting application for sixty days. The Commission added this

provision in 1999 in order to prevent “strike” applications against prospective applicants that have begun the process of seeking consent from existing stations. We note that § 1.935 of the Commission’s rules already prohibits the filing of mutually exclusive applications for the purpose of “greenmail.” We seek comment on this proposal.

5. *470–512 MHz Band Offset Channels.* In 1997, the Commission directed the certified frequency coordinators for the private land mobile radio services to reach a consensus on the applicable coordination procedures for the 12.5 kHz offset channels in the 470–512 MHz band. That consensus is embodied in the LMCC procedures for evaluating adjacent channel interference in the 470–512 MHz band using the interference criteria of TIA/EIA/TSB–88 (TSB–88). The LMCC Consensus provides that an application shall not be certified if an incumbent or the applicant has unacceptable interference of more than five percent reduction of the calculated service area reliability. LMCC appears to suggest codifying this requirement in our rules. We believe that codifying the TSB–88 requirement could reduce confusion concerning the requirement, so we seek comment on this proposal. We also ask commenters to consider whether it is preferable to leave the requirement uncoded, so that the frequency coordinators can continue to modify the TSB–88 procedures without an amendment of the Commission’s rules.

6. *Station Identification.* Motorola urges the Commission to consider certain updates and changes to § 90.425 of the rules governing the transmission of station identification information. It first notes that the Commission’s rules permit 800 and 900 MHz stations that are licensed on an exclusive basis and normally employ digital emissions to transmit station identification in digital format, and that similar rules are under consideration for the 700 MHz public safety band, but that the rules do not provide the same flexibility for VHF or UHF PLMR licensees. Motorola suggests modifying § 90.425 of the Commission’s rules to allow the transmission of the required station identification using digital signals instead of Morse code. Motorola also notes that § 90.425(e)(2) allows CMRS licensees to use a single call sign for commonly owned facilities that are operated as part of a single system, and requests that we afford similarly situated PLMR licensees the same flexibility. We seek comment on Motorola’s proposals.

## I. Procedural Matters

### A. Ex Parte Rules—Permit-But-Disclose Proceeding

7. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission’s rules.

### B. Comment Dates

8. Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before May 14, 2010 and reply comments on or before June 1, 2010. All filings related to this *Second FNPRM* should refer to WP Docket No. 07–100.

9. *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/> or the Federal eRulemaking Portal: <http://www.regulations.gov>.

10. *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

11. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

12. All hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW., Room TW–A325, Washington, DC 20554. The filing hours are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

13. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

14. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington, DC 20554.

15. *People With Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

### C. Paperwork Reduction Act

16. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

## II. Initial Regulatory Flexibility Analysis

17. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in the *Second FNPRM*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Second FNPRM* as provided in paragraph 49 of the item. The Commission will send a copy of the *Second FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the U.S. Small Business Administration. In addition, a copy of the *Second FNPRM* and IRFA (or summaries thereof) will also be published in the **Federal Register**.

### *Need for, and Objectives of, the Proposed Rules:*

18. This proceeding is part of our continuing effort to provide clear rules that are easy for licensees to comprehend. The *Second FNPRM* seeks comment regarding changes to certain regulatory requirements contained in part 90 of the Commission’s rules pertaining to telemetry operations by railroad licensees, and trunking of private land mobile radio operations below 512 MHz.

### *Legal Basis for Proposed Rules:*

19. Authority for issuance of this item is contained in sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 403.

### *Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply:*

20. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the

clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See 5 U.S.C. 601(3)*. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by the rules changes proposed in this *Second FNPRM*.

**21. Private Land Mobile Radio Licensees.** Private land mobile radio (PLMR) systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the Commission has not developed a small business size standard specifically applicable to PLMR users. The SBA rules do, however, contain a size standard for small radiotelephone (wireless) companies which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons. *See 13 CFR 121.201, NAICS code 517212*. The SBA rules contain a definition for cellular and other wireless telecommunications companies, which encompasses business entities engaged in radiotelephone communications employing no more than 1,500 persons. The Commission's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz. *See Federal Communications Commission, 60th Annual Report, Fiscal Year 1994 at 120–121*.

**22. Frequency Coordinators.** Neither the Commission nor the SBA has developed a small business size standard specifically applicable to spectrum frequency coordinators. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of "Paging" and "Cellular and Other Wireless Telecommunications." *See 13 CFR 121.201, NAICS code 517212*. Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year. *See 13 CFR 121.201, NAICS code 517211*. Of this total, 804 firms had employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more. Thus, under this category and

associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year. *See 13 CFR 121.201, NAICS code 517212*. Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

**23. RF Equipment Manufacturers.** The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment." *See 13 CFR 121.201, NAICS code 334220*. The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees. According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year. *See U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005)*. Of this total, 1,010 had employment of under 500, and an additional 13 had employment of 500 to 999. Thus, under this size standard, the majority of firms can be considered small.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements:**

24. There are no projected reporting, recordkeeping or other compliance requirements.

**E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered:**

25. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the

clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. *See 5 U.S.C. 603(c)*.

26. We believe the changes proposed in this *Second FNPRM* will promote flexibility and more efficient use of the spectrum, reduce administrative burdens, and allow licensees to better meet their communication needs. In this *Second FNPRM*, we seek comment on the proposals to modify the rules. Many of the proposed changes constitute clarification of existing requirements or elimination of existing limitations. Among other proposals, we seek comment on whether our trunking regulations should be refined for ease of understanding and to reduce the administrative and licensee regulatory burden. We also are considering the alternative of retaining the existing trunking regulations. The *Second FNPRM* also seeks comment on the feasibility of increasing the allowed power for end of train devices to provide a more robust communications link from the back of long trains.

**F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules:**

27. None.

### III. Ordering Clauses

28. Pursuant to §§ 4(i), 303(r), and 403 of the Communications Act of 1934, 47 U.S.C. 154(i), 303(r), and 403, that this *Second FNPRM* is hereby adopted.

29. Notice is hereby given of the proposed regulatory changes described in this *Second FNPRM* and comment is sought on these proposals.

30. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Second FNPRM*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 90

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
Secretary.

### Proposed Rules

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for Part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

2. Section 90.7 is amended by adding definitions for “centralized trunked system” and “decentralized trunked system” in alphabetical order and by revising the definition of “trunked radio system” to read as follows:

### § 90.7 Definitions.

*Centralized trunked system.* A system in which there is dynamic assignment of communications paths by automatically searching all communications paths in the system for and assigning to a user an open communications path within that system. Individual communications paths within a trunked system may be classified as centralized or decentralized in accordance with the requirements of § 90.187.

*Decentralized trunked system.* A system which monitors the communications paths within its assigned channels for activity within

and outside of the trunked system and transmits only when an available communications path is found. Individual communications paths within trunked system may be classified as centralized or decentralized in accordance with the requirements of § 90.187.

*Trunked radio system.* A radio system employing technology that provides the availability to search two or more available communications paths and automatically assign a user an open communications path.

3. Section 90.187 is revised to read as follows:

### § 90.187 Trunking in the bands between 150 and 512 MHz.

(a) Applicants for centralized and decentralized trunked systems operating on frequencies between 150 and 512 MHz (except 220–222 MHz) must indicate on their applications (radio service and class of station code, instructions for FCC Form 601) that their system will be trunked. Licensees of stations that are not trunked may trunk their systems only after modifying their license (*see* § 1.927 of this chapter).

(b) Trunked systems operating under this section must employ equipment that prevents transmission on a trunked frequency if a signal from another system is present on that frequency. The level of monitoring must be sufficient to avoid harmful interference to other systems.

(c) The monitoring requirement in paragraph (b) of this section does not apply to centralized trunked systems operating in the 470–512 MHz band that meet the loading requirements of § 90.313 of this part and have exclusive use of their frequencies in their service area.

(d) The monitoring requirement in paragraph (b) of this section does not apply to centralized trunked systems if the application is accompanied by written consent from all affected licensees.

(1) Affected licensees for the purposes of this section are licensees (and previously filed pending applicants) meeting both of these criteria:

(i) Spectral overlap. Licensees (and filers of previously filed pending applications) with an assigned (or proposed) frequency having a spectral separation from a frequency of the proposed centralized trunked station that does not exceed these values:

Proposed station	Incumbent authorized bandwidth		
	20 kHz	11.25 kHz	6 kHz
25 kHz .....	15.0 kHz .....	15.0 kHz .....	15.0 kHz.
12.5 kHz .....	15.0 kHz .....	7.5 kHz .....	7.5 kHz.
6.25 kHz .....	15.0 kHz .....	7.5 kHz .....	3.125 kHz.

**Note:** The left column is the authorized bandwidth requested for the proposed trunked station. The second row is the authorized bandwidth of the incumbent. The other cells in the table show the frequency range above and below the frequency of the proposed centralized trunked station that must be considered.

(ii) Contour overlap. (A) Licensees (and filers of previously filed pending applications) with a service contour (37 dBu for stations in the 150–174 MHz band, and 39 dBu for stations in the 421–512 MHz band) that is overlapped by the proposed centralized trunked station’s interference contour (19 dBu for stations in the 150–174 MHz band, and 21 dBu for stations in the 421–512 MHz band), or with an interference contour that is overlapped by the proposed centralized trunked station’s service contour.

(B) The calculation of service and interference contours shall be performed using generally accepted engineering practices and standards, including

appropriate derating factors, agreed to by a consensus of all certified frequency coordinators. Frequency coordinators shall make this information available to the Commission upon request.

(1) Licensees (and filers of previously filed pending applicants) with no permanent base station may be deemed to be affected licensees for the purposes of this section only if center geographic coordinates are specified for the authorized operating area. In such a case, the contours set forth in paragraph (d)(1)(ii)(A) of this section shall be calculated with respect to a station located at the center coordinates.

(2) After January 1, 2013, licensees with an authorized bandwidth exceeding 12.5 kHz will not be deemed affected licensees, unless the licensee meets the efficiency standard set forth in § 90.203(j)(3).

(3) The written consent from an affected licensee shall state all terms agreed to by the parties and shall be

signed by the parties. The written consent shall be maintained by the operator of the centralized trunked station and be made available to the Commission upon request. An application for a centralized trunked station shall include either a certification from the applicant that written consent has been obtained from all affected licensees, or a certification from the frequency coordinator that there are no affected licensees.

(4) The exclusive service area of a station that has been authorized for centralized trunked operation will be protected from proposed centralized trunked, decentralized trunked or conventional operations in accordance with the standards of paragraphs (d)(1)(i)(A) and (d)(1)(ii) of this section.

(2) [Reserved]

(e) Trunking of systems licensed on paging-only channels or licensed in the Radiolocation Service (subpart F of this part) is not permitted.

(f) No more than 10 channels for new centralized trunked operation in the Industrial/Business Pool may be applied for at a single transmitter location or at locations with overlapping service contours as specified in paragraph (d)(1)(ii)(A) of this section. Subsequent applications for centralized trunked operation are limited to no more than an additional 10 channels, and must be accompanied by a certification, submitted to the certified frequency coordinator coordinating the application, that all of the applicant's existing channels authorized for centralized trunked operation at that location or at locations with overlapping service contours have been constructed and placed in operation. Certified frequency coordinators are authorized to require documentation in support of the applicant's certification that existing channels have been constructed and placed in operation. Applicants for Public Safety Pool channels may request more than 10 centralized trunked channels at a single location or at locations with overlapping service contours if accompanied by a showing of sufficient need. The requirement for such a showing may be satisfied by submission of loading studies demonstrating that requested channels in excess of 10 will be loaded with 50 mobiles per channel within a five year period commencing with the grant of the application.

(g) If a licensee authorized for centralized trunked operation discontinues trunked operation for a period of 30 consecutive days, the licensee, within 7 days thereafter, shall file a conforming application for modification of license with the Commission.

4. Section 90.238 is amended by revising paragraph (e) to read as follows:

**§ 90.238 Telemetry operations.**

\* \* \* \* \*

(e) In the 450–470 MHz band, telemetry operations will be authorized on a secondary basis with a transmitter output power not to exceed 2 watts on frequencies subject to § 90.20(d)(27) or § 90.35(c)(30), except that telemetry operations used by Railroad licensees may be authorized on frequency pair 452/457.9375 MHz with a transmitter output power not to exceed 8 watts.

\* \* \* \* \*

5. Section 90.303 is amended by adding paragraph (d) to read as follows:

**§ 90.303 Availability of frequencies.**

\* \* \* \* \*

(d) Applications for stations in the 470–512 MHz band operating on assigned frequencies allotted for

bandwidths of 12.5 kHz or less must demonstrate that the proposed operations will neither cause more than five percent degradation to adjacent-channel licensees (and filers of previously filed pending applications) nor incur more than five percent degradation from adjacent-channel licensees (and filers of previously filed pending applications), using the interference criteria of Telecommunications Industry Association/Electronics Industry Association Telecommunications Systems Bulletin 88 (TIA/EIA/TSB-88), Wireline Communications System—Performance in Noise and Interference-Limited Situations—Recommended Methods for Technology-Independent Modeling, Simulation, and Verification (January 1998). For purposes of this paragraph, adjacent-channel licensees (and filers of previously filed pending applications) are stations with an authorized bandwidth of 20 kHz and an assigned frequency separated by 12.5 kHz or less from the proposed station, and stations with an authorized bandwidth of 11.25 kHz and an assigned frequency separated by 6.25 kHz or less from the assigned frequency of the proposed station.

6. Section 90.425 is amended by removing paragraph (e)(2), redesignating paragraph (e)(3) as (e)(2), and adding paragraphs (f) and (g) to read as follows:

**§ 90.425 Station identification.**

\* \* \* \* \*

(f) Stations subject to a station identification requirement will be permitted to use a single call sign for commonly owned facilities that are operated as part of a single system. The call sign must be transmitted each hour within five minutes of the hour, or upon completion of the first transmission after the hour.

(g) Stations licensed in the 150–170 MHz and 450–470 MHz bands that are licensed on an exclusive basis, and normally employ digital signals for the transmission of data, text, control codes, or digitized voice, may also be identified by digital transmission of the call sign. A licensee that identifies its call sign in this manner must provide the Commission, upon request, information sufficient to decode the digital transmission and ascertain the call sign transmitted.

[FR Doc. 2010-7644 Filed 4-13-10; 8:45 am]

**BILLING CODE 6712-01-P**

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Part 31**

[FAR Case 2009–006; Docket 2010–0084, Sequence 1]

**RIN 9000–AL39**

**Federal Acquisition Regulation; FAR  
Case 2009–006, Labor Relations Costs**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) propose to amend the Federal Acquisition Regulation (FAR) to implement Executive Order 13494, Economy in Government Contracting, issued on January 30, 2009, and amended on October 30, 2009. This order treats as unallowable the costs of any activities undertaken to persuade employees, whether employees of the recipient of Federal disbursements or of any other entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employee's own choosing.

**DATES:** Interested parties should submit written comments to the Regulatory Secretariat on or before June 14, 2010 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit comments identified by FAR case 2009–006 by any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by inputting “FAR Case 2009–006” under the heading “Enter Keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “FAR Case 2009–006.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “FAR Case 2009–006” on your attached document.

- *Fax:* 202–501–4067.

- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), 1800 F Street, NW., Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

*Instructions:* Please submit comments only and cite FAR case 2009–006, in all correspondence related to this case. All comments received will be posted without change to <http://www.regulations.gov>, including any personal and/or business confidential information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Edward Chambers, Procurement Analyst, at (202) 501–3221, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2009–006.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Executive Order 13494, Economy in Government Contracting, dated January 30, 2009, was published in the **Federal Register** at 74 FR 6101 on February 4, 2009, as amended on October 30, 2009, was published in the **Federal Register** at 74 FR 57239 on November 5, 2009, provided that to promote economy and efficiency in Government contracting, certain costs that are not directly related to the contractor's provision of goods and services to the Government shall be unallowable for payment, thereby directly reducing Government expenditures. Thus, this order states that the costs of the activities of preparing and distributing materials; hiring or consulting legal counsel or consultants; holding meetings (including paying the salaries of the attendees at meetings held for this purpose); and planning or conducting activities by managers, supervisors, or union representatives during work hours, when they are undertaken to persuade employees to exercise or not to exercise, or concern the manner of exercising, rights to organize and bargain collectively are unallowable costs. This order is consistent with Government policy to remain impartial concerning any labor-management dispute involving Government contractors. This proposed rule will

make the necessary changes within the FAR.

This is a significant regulatory action and therefore was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the cost principles contained in this rule. Further, the practical effect of the rule will be that contractors will no longer be reimbursed for costs incurred in promoting or opposing union organizing. It is substantially less likely that small businesses will incur costs of this nature. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. The Councils invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

The Councils will also consider comments from small entities concerning the existing regulations in FAR part 31 affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2009–006) in all correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. chapter 35, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: April 9, 2010.

**Edward Loeb,**

*Acting Director, Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

**PART 31—CONTRACT COSTS PRINCIPLES AND PROCEDURES**

1. The authority citation for 48 CFR part 31 continues to read as follows:

**Authority:** 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 31.205–21 to read as follows:

**31.205–21 Labor relations costs.**

(a) Costs incurred in maintaining satisfactory relations between the contractor and its employees (other than those made unallowable in paragraph (b) of this section), including costs of shop stewards, labor management committees, employee publications, and other related activities, are allowable.

(b) As required by Executive Order 13494, Economy in Government Contracting, costs of any activities undertaken to persuade employees, of any entity, to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing are unallowable. Examples of unallowable costs in paragraph (b) of this section include, but are not limited to, the costs of—

(1) Preparing and distributing materials;

(2) Hiring or consulting legal counsel or consultants;

(3) Meetings (including paying the salaries of the attendees at meetings held for this purpose); and

(4) Planning or conducting activities by managers, supervisors, or union representatives during work hours.

[FR Doc. 2010–8504 Filed 4–13–10; 8:45 am]

**BILLING CODE 6820–EP–P**

# Notices

Federal Register

Vol. 75, No. 71

Wednesday, April 14, 2010

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

April 8, 2010.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

### Animal and Plant Health Inspection Service

*Title:* Classical Swine Fever Status of Chile.

*OMB Control Number:* 0579-0235.

*Summary of Collection:* The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, or eradicate pests or diseases of livestock or poultry. Veterinary Services, a program within USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for carrying out this disease prevention mission. The agency regulates the importation of animals and animal products into the U.S. to guard against the introduction of exotic animal diseases such as classical swine fever. The regulations under which APHIS conducts these disease prevention activities are contained in Title 9, Chapter 1, Subchapter D, and Part 91 through 99 of the Code of Federal Regulations. These regulations place certain restrictions on the importation of swine, pork and pork products into the U.S.

*Need and Use of the Information:* Swine, pork, and pork products from specified regions must be accompanied by a certificate issued by a salaried veterinary officer of the Government of Chile. The certificate must identify both the exporting region and the region of origin as a region designated by APHIS as free of classical swine fever at the time the swine, pork, or pork products were in the region.

*Description of Respondents:* Federal Government.

*Number of Respondents:* 4.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 32.

### Animal and Plant Health Inspection Service

*Title:* Cut Flowers from Countries with Chrysanthemum White Rust.

*OMB Control Number:* 0579-0271.

*Summary of Collection:* Under the Plant Protection Act (7 U.S.C. 7701-*et seq.*), the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the

introduction of plant pests into the United States or their dissemination within the United States. The regulations in 7 CFR Part 319 prohibits or restricts the importation of plants, plant parts, and related materials to prevent the introduction of foreign plant pests into the United States. Conditions governing the importation of cut flowers into the United States are contained in "Subpart-Cut Flowers" (§§ 319.74-1 through 319.74-4, referred to as the regulations). The Animal and Plant Health Inspection Service (APHIS) amended the cut flowers regulations to establish specific requirements for the importation of cut flowers that are hosts of Chrysanthemum White Rust (CWR) from countries where the disease is known to occur and to make APHIS' cut flowers and nursery stock regulations consistent. CWR is a serious disease in nurseries where it may cause complete loss of greenhouse chrysanthemum crops.

*Need and Use of the Information:* APHIS requires that some plants and plant products are accompanied by a phytosanitary inspection certificate that is completed by plant health officials in the originating or transiting country. APHIS uses the information on this certificate to determine the pest condition of the shipment at the time of inspection in the foreign country. The information is used as a guide to the intensity of the inspection that APHIS must conduct when the shipment arrives. Without this information, all shipments would need to be inspected very thoroughly, thereby requiring considerably more time.

*Description of Respondents:* Business or other for-profit; Federal Government.

*Number of Respondents:* 1,025.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 636.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2010-8456 Filed 4-13-10; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

April 8, 2010

The Department of Agriculture has submitted the following information



collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), [OIRA\\_Submission@OMB.EOP.GOV](mailto:OIRA_Submission@OMB.EOP.GOV) or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

#### Food Safety and Inspection Service

*Title:* Registration Requirements.

*OMB Control Number:* 0583–0128.

*Summary of Collection:* The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry are safe, wholesome, unadulterated, and properly labeled and packaged. According to the regulations, (9 CFR 320.5 and 381.179), parties required to register with FSIS must do so by submitting form FSIS Form 5020–1, “Registration of Meat and Poultry Handlers.”

*Need and Use of the Information:* FSIS will collect the name, address of all locations at which they conduct the business that requires them to register and all trade or business names under which they conduct these businesses. FSIS uses this information to maintain a database of these businesses. If the information were not collected, it would reduce the effectiveness of the meat and poultry inspection program.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 600.

*Frequency of Responses:* Reporting: Other (Once).

*Total Burden Hours:* 150.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2010–8457 Filed 4–13–10; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### Notice of Funding Availability (NOFA): Section 515 Rural Rental Housing Program for New Construction in Fiscal Year 2010

**AGENCY:** Rural Housing Service (RHS), USDA.

**ACTION:** Notice. Announcement Type: Inviting applications from eligible applicants for Fiscal Year (FY) 2010 funding.

Catalog of Federal Domestic Assistance Number (CFDA): 10.415 and 10.427.

**SUMMARY:** U.S. Department of Agriculture (USDA) Rural Development (Agency) administers the programs of the RHS. This NOFA announces the timeframe to submit applications for Section 515 Rural Rental Housing (RRH) new construction loan funds, including applications for the nonprofit set-aside for eligible nonprofit entities, set-aside for Rural Economic Area Partnership (REAP), and the set-aside for the most Underserved Counties and Colonias (Cranston-Gonzalez National Affordable Housing Act).

This document describes the methodology that will be used to distribute funds, the application process, submission requirements, and areas of special emphasis or consideration. For FY 2010, the Agency will provide scoring points to those proposals that have a goal of reaching a net zero energy consumption level during future project operations.

**DATES:** The deadline for receipt of all applications in response to this NOFA is 5 p.m., local time for each USDA

Rural Development State Office 60 days from the published date of this Notice. The initial application closing deadline is firm as to date and hour. USDA Rural Development will not consider any initial application that is received after the closing deadline. Applicants intending to mail initial applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due applications will not be accepted.

#### FOR FURTHER INFORMATION CONTACT:

Applicants must contact the applicable Rural Development State Office serving the State where the project will be built in order to submit an application. The State Office will provide further information pertaining to the application process, copy of the initial application package, and a list of designated places established under 7 CFR 3560.57 for new Section 515 facilities. A listing of USDA Rural Development State Offices, addresses, telephone numbers, and contact person can be found below in Section XI of this NOFA.

For general information, applicants may contact Melinda Price, Finance and Loan Analyst, Multi-Family Housing Preservation and Direct Loan Division, Rural Housing Service, U.S. Department of Agriculture, Federal Building Room 507, 200 North High St. Columbus, Ohio 43215–2418, telephone (614) 255–2403 (not a toll free number), or (800) 877–8339 (TDD-Federal Information Relay Service), or via e-mail [melinda.price@wdc.usda.gov](mailto:melinda.price@wdc.usda.gov).

For questions regarding design and construction project delivery methods, questions about any of the energy efficiency and environmental sustainability programs, as well as questions about design and construction contracts should be directed to Meghan Walsh, A.I.A., LEED AP, Architect, USDA/RD/PSS, 1400 Independence Ave., SW., Mail Stop 0761, Washington, DC 20250, Rural Housing Service, (202) 205–9590 (not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service), or via e-mail [meghan.walsh@wdc.usda.gov](mailto:meghan.walsh@wdc.usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Programs Affected

The RRH program is listed in the Catalog of Federal Domestic Assistance under Number 10.415, Rural Rental Housing Loans. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.



## Paperwork Burden Act

The information collection requirements contained in this Notice have received approval from the Office of Management and Budget (OMB) under Control Number 0570-0190.

### Overview

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111-80), October 16, 2009 details the level of funding. The Section 515 Multi-Family Housing (MFH) program is authorized by the Housing Act of 1949, as amended (42 U.S.C. 1485) and provides Rural Development with the authority to make loans for low-income MFH.

## Program Administration

### I. Authorities

Section 515 of the Housing Act of 1949, as amended, (42 U.S.C. 1485) provides USDA Rural Development with the authority to make loans to any individual, corporation, association, trust, Indian tribe, public or private nonprofit organization, which may include a faith-based or community organization, consumer cooperative, or partnership to provide rental or cooperative housing and related facilities in rural areas for very-low, low, or moderate income persons or families, including elderly persons and persons with disabilities. Rental assistance (RA) is a tenant subsidy for very-low and low-income families residing in rural rental housing facilities with USDA Rural Development financing. \$2,030,000 in RA will be available for new construction in Fiscal Year (FY) 2010.

### II. Description of Section 515 New Construction Funding Opportunity

The total amount available for FY 2010 for Section 515 new construction is \$18,902,349:

Non-Restricted .....	\$8,808,935
Set-aside for non-profits .....	4,617,827
Set-aside for Underserved Counties and Colonias .....	3,475,587
REAP Zones available until June 30, 2010 .....	2,000,000

All applications for new construction funding must qualify under one of the three Set-asides or as a non-restricted. Qualifications for the Set-asides are described in paragraph VII below. Those applications scoring highest in each of the four categories will be funded first. Any unused funds will revert to Non-restricted status.

### III. Award Information

(A) Individual loan requests may not exceed \$1 million. This applies to regular Section 515 funds and set-aside funds. The Administrator may make an exception to this limit in cases where a State's average total development costs exceed the National average by 50 percent or more.

(B) No State may receive more than 20 percent of the total amount available for new construction, including set-aside funds.

(C) Funding for this program will be equitably distributed across the country, and applied to all Five (5) Climate Zones within the U.S. as defined by the Department of Energy. A map of the 5 climate zones can be found at: [http://www.eia.doe.gov/emeu/recs/climate\\_zone.html](http://www.eia.doe.gov/emeu/recs/climate_zone.html). The four highest scoring applications in each of the five climate zones will be selected for further processing. An Agency architect from each climate zone will be assigned to assist in evaluating applications.

### IV. Eligibility Information

Applicants must meet the eligibility criteria as determined under 7 CFR 3560.55.

### V. Application and Submission Information

(A) Application Requirements: All applications must be filed with the appropriate Rural Development State Office where the project will be located and must meet the requirements of 7 CFR 3560.56, as well as comply with the provisions of this NOFA. The USDA Rural Development State Office will date and time stamp incoming applications to evidence timely or untimely receipt, and, upon request, provide the applicant with a written acknowledgment of receipt. A list of State Office contacts may be found in Section XI of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by a Notice published in the **Federal Register**.

(B) Submission Requirements: Each application shall include the information, documentation, forms and exhibits required by 7 CFR 3560.56, as well as comply with the provisions of this NOFA. Documents and information required in the application package are described as follows:

- (1) Documents to establish applicant eligibility:
  - a. Form SF 424, Application for Federal Assistance.

- b. Form RD 410-9, *Statement Required by Privacy Act* (for individuals).

- c. Form RD 400-4, *Assurance Agreement*.

- d. Form HUD 2530, Previous Participation Certification.

- e. Current (within 6 months) financial statements with the following paragraph certified by an authorized individual, agent or representative with the legal authority to do so: "I/we certify the above is a true and accurate reflection of my/our financial condition as of the date stated herein. This statement is given for the purpose of inducing the United States of America to make a loan or to enable the United States of America to make a determination of continued eligibility of the applicant for a loan as requested in the loan application of which this statement is a part."

- f. Check for \$28 from individual applicants and \$40 from entity applicants made out to U.S. Department of Agriculture. This will be used to pay for credit reports obtained by USDA Rural Development.

- g. Statement signed by applicants that they will pay any cost overruns.

- h. If an entity applicant is selected, the Agency will require additional documentation as set forth in a Conditional Commitment in order to verify the entity has the legal and financial capability to carry out the obligations of the loan.

(2) Documents to establish project feasibility:

The applicant must provide the following:

- a. Market feasibility documentation: Either a market study or a market survey, as appropriate.

- b. Type of project and structures proposed (total number of units by bedroom size, size of each unit type, size and type of other facilities).

- c. Schematic drawings: (Because projects are expected to be in pre-design or very early schematic design for application purposes, these drawings may be prepared only as preliminary sketches. It is expected that teams will be working in an integrated design method and therefore there will be changes to these sketches to meet energy-efficiency goals, if any)

- (i) Site plan, including contour lines; Floor plan of each living unit type and other spaces, such as laundry facilities, community rooms, stairwells, etc.;

- (ii) Building exterior elevations;

- (iii) Typical building exterior wall section; and

- (iv) Plot plan.

- d. Description and justification of related facilities, and a schedule of

separate charges for related facilities. Related facilities include community rooms that can be used by tenants and management at no additional charge to the tenants.

e. Type and method of construction (owner builder, negotiated bid, or contractor method).

f. Statement of estimated costs (Form RD 1924–13, *Estimate and Certificate of Actual Costs*). The selection of the contractor must be done through the process established in 7 CFR part 1924.

g. Statement of proposed management.

h. Congregate services package/plan (if applicable).

i. Statement of support from other Government services providers to the project (congregate only).

j. Response to the Uniform Relocation Assistance Act (if applicable).

(3) Documents for Project financing: The applicant must provide the following:

a. Statement of budget and cash flow (applicant completes Form RD 3560–7, *Multiple Family Housing Project Budget/Utility Allowance*), including type of utilities and utility allowance, if applicable, and any contribution to the reserve account.

b. Congregate services charges (if applicable).

c. Status of efforts to obtain leveraged funds.

d. Proposed construction financing (interim or multiple advance; if interim financing, letter of interest from intended lender).

(4) Documents for environmental and site information:

a. Form RD 1940–20, *Request for Environmental Information*.

b. Evidence of compliance with Executive Order 12372 (A–95) (if applicable). Form SF 424 is sent to a clearinghouse for intergovernmental review.

c. A copy of the American Society for Testing and Materials (ASTM) Phase I Environmental Site Assessment to cover environmental due diligence. The ASTM Phase I Environmental Site Assessment will be obtained from the company or person who performs the environmental site assessment.

d. Map showing location of community services such as schools, hospitals, fire and police departments, shopping malls and employment centers.

e. Evidence of submission of the project description to the State Housing Preservation Office with request for comments.

f. The applicant's comments regarding relevant offsite conditions that may impact the project.

g. The applicant's explanation of any proposed energy efficiency components.

(5) Fillable forms to be included in initial application package may be found at the following links:

a. Form SF 424, Application for Federal Assistance, which can be found online at <http://www.grants.gov/techlib/SF424-v2.0.pdf>;

b. Form RD 1940–20, *Request for Environmental Information*, which can be found online at: <http://www.rurdev.usda.gov/regs/forms/1940-20.pdf>;

c. Form HUD 2530, Previous Participation Certification, which can be found online at: <http://www.hud.gov/offices/adm/hudclips/forms/files/2530.pdf>;

d. Form RD 1924–13, *Estimate and Certificate of Actual Costs*, which can be found online at: <http://forms.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD1924-13.pdf>;

e. Form RD 400–4, Assurance Agreement, which can be found online at: <http://www.rurdev.usda.gov/regs/forms/0400-04.pdf>.

The following required forms are fillable and are available online but require e-authentication access. If the applicant does not have e-authentication access, the applicable State Office (Section XI) must be contacted for instructions and permission to obtain access or a copy of the form.

Form RD 3560–7, *Multiple Family Housing Project Budget/Utility Allowance*: [https://formsadmin.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD3560-0007\\_060500V01.pdf](https://formsadmin.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD3560-0007_060500V01.pdf), Form RD 410–9, *Statement Required by the Privacy Act* (for individuals only) <https://formsadmin.sc.egov.usda.gov/efcommon/eFileServices/Forms/RD0410-0009.pdf>.

Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State Office will base its determination of completeness of the application and the eligibility of each applicant on the information provided in the application. All applicants will receive a letter notifying them of their selection or rejection. Applicants that are selected will be given instructions on how to proceed, following the procedures established in 7 CFR part 3560.

## VI. Selection Process

An amount of \$8,808,935 is available for non-restricted Section 515 new construction. Initial applications shall be submitted to the States. States will

then accept; review, score, and rank requests in accordance with 7 CFR 3560.56 and this NOFA. The four highest scoring applications in each of the five climate zones will receive further processing. The National Office will divide the applications by climate zone, rank all requests within each climate zone, and equitably distribute funds, within funding limits. If insufficient funds remain for the next ranked proposal, USDA Rural Development will select the next ranked proposal in that particular climate zone that falls within the remaining levels. Point score ties within a particular climate region will be handled in accordance with 7 CFR 3560.56(c)(2). All eligible and complete applications will be evaluated based on the following criteria:

(A) *Net Zero Energy Consumption*. In an effort to implement USDA's nationwide initiative to promote sustainable building development, energy-efficiency and conservation, USDA Rural Development has adopted a goal that all new MFH projects, financed in whole or in part by the USDA, will achieve net zero energy consumption—it will consume no more energy than it produces. As a result, points will be awarded for participation in this initiative pursuant to 7 CFR section 3560.56(c)(1)(iii). Program participation points will be awarded as follows:

(1) *Participation in a System Third-Party Measured and Verified Sustainable Development and Energy-Efficiency program*. The points will be allocated as follows: (maximum 37 points).

(a) Participate in the Department of Energy's Energy Star for Homes program: [http://www.energystar.gov/index.cfm?c=bldrs\\_lenders\\_raters.nh\\_multifamily\\_units](http://www.energystar.gov/index.cfm?c=bldrs_lenders_raters.nh_multifamily_units). (2 points);

(b) Participate in the Department of Energy's Builder's Challenge program: <http://www1.eere.energy.gov/buildings/challenge/about.html>. (6 points);

(c) Participation in the following programs will be awarded 5 points for each program with a maximum of 15 points.

(1) Green Communities program by the Enterprise Community Partners (<http://www.enterprisecommunity.org>);

(2) LEED for Homes program by the United States Green Building Council (USGBC) (<http://www.usgbc.org>); and

(3) The National Association of Home Builders (NAHB) ICC 700–2008 National Green Building Standard™ (<http://www.nahb.org>).

(d) Participation in higher certification levels. LEED for Homes and ICC 700–2008 National Green Building

Standard™ each have four levels of increasingly challenging certification. For specific information on the different levels for these programs please refer to their websites listed above. Projects will receive an additional 2 points for each higher certification level commitment beyond the baseline of the program. (16 points maximum)

(e) Participate in local green/energy efficient building standards. Applicants, who participate in a city, county or municipality program, will receive an additional 2 points. Points will be awarded only if the applicant is cross-enrolled with a national program described under section VI.A.(1).

The applicant should be aware that most of the following requirements are embedded in the third-party programs rating and verification systems; the applicant should look at the requirements for each program for specific details:

(a) Team of qualified professionals in design and construction of sustainable buildings.

(b) Initial design charette, ongoing third party verification and post-construction operations & maintenance education.

(c) Tight building envelope with indoor air quality assurance.

(d) *Program for education of tenants and property managers in operations and maintenance.*

(2) *Energy Generation.* To reach USDA's goal of net zero energy consumption, it is essential to generate renewable energy on site which will complement a weather tight, well-insulated building envelope with highly efficient mechanical systems. Possible renewable energy generation technologies include: Wind turbines and micro-turbines, micro-hydro power, photovoltaics, solar hot water systems and biomass/biofuel systems that do not use fossil fuels in production. Geo-exchange systems are highly encouraged as they lessen the total demand for energy and, if supplemented with other renewable energy sources, can achieve zero energy consumption more easily. Energy analysis of preliminary building plans using industry recognized simulation software should document the projected energy consumption of the building, the portion of building consumption which will be satisfied through on-site generation, and the building's HERS (Home Energy Rating System) score. In order to receive points under this section the energy analysis will need to be submitted with the application. Points under this section will be awarded as follows:

(a) New MFH projects whose preliminary building plans project it

will consume no more energy than it produces. (30 Points)

(b) Projects whose preliminary building plans project they will have less than a one hundred percent energy generation commitment (where generation is considered to be the total amount of energy needed to be generated on-site to make the building a net-zero consumer of energy), will be awarded points corresponding to their percent of commitment. (ex. 80 percent commitment to energy generation = 24 points or 80 percent of 30 points).

**Note:** This section was moved up substantially shortened.

(B) *Leverage Assistance:* The presence and extent of leveraged assistance for the units that will serve USDA Rural Development income-eligible tenants at basic rents, as defined in 7 CFR 3560.11, comparable to those rents if USDA Rural Development provided full financing, computed as a percentage of the USDA Rural Development total development cost (TDC). Each of the environmental conservation programs mentioned under VI.(A) may include grants and additional funding. This funding is also considered leverage assistance and can receive points under this section. Also, funding sources for energy-efficiency in each State can be found at: <http://www.dsireusa.org/>. Loan proposals that include leveraged/secondary funds which have been requested but have not yet been committed will be processed as follows: The proposal will be scored based on the requested secondary funds, provided (1) the applicant includes evidence of a filed application for the funds; and (2) the funding date of the requested funds will permit processing of the loan request in the current funding cycle, or, if the applicant does not receive the requested funds, will permit processing of the next highest ranked proposal in the current year. Points will be awarded in accordance with the following table. Percentages will be rounded to the next higher whole number. (0 to 30 points)

Number of points	Description % of leveraging
30 .....	150 or more
25 .....	100–149
20 .....	50–99
15 .....	1–49

(C) The units to be developed are in a colonia, tribal land, or Rural Economic Area Partnership (REAP) community, or in a place identified in the State Consolidated Plan or State Needs

Assessment as a high need community for MFH. (20 points)

(D) Pursuant to 7 CFR 3560.56(c)(1)(iii), a National Office initiative will provide points to loan requests that meet the selection criteria as follows: In States where USDA Rural Development has an on-going formal working relationship, agreement, or Memorandum of Understanding (MOU) with the State to provide state financial resources (State funds, State RA, HOME funds, Community Development Block Grant (CDBG) funds, or Low-Income Housing Tax Credits (LIHTC)) for USDA Rural Development proposals; or where the State provides preference or points to USDA Rural Development proposals in awarding such State resources, 20 points will be provided to loan requests that include such State resources in an amount equal to at least 5 percent of the TDC. Native American Housing and Self Determination Act (NAHASDA) funds may be considered a State resource if the tribal plan for NAHASDA funds contains provisions for partnering with USDA Rural Development for MFH. The applicant can contact its USDA Rural Development State Office to determine whether a particular State falls into this initiative. (20 Points)

(E) The loan request includes donated land meeting the provisions of 7 CFR 3560.56(c)(1)(iv). (5 points)

(F) Pursuant to 7 CFR 3560.56(c)(1)(iii), points will be awarded if the property will be constructed in a Presidentially declared disaster area. The area must have been Presidentially declared a disaster area in 2009. For further information on Presidentially declared disaster areas, see <http://www.rurdev.usda.gov/rd/disasters/>. (10 Points)

## VII. Set Asides

Loan requests will be accepted for the following set asides:

(1) *Nonprofit set-aside.* An amount of \$4,617,827 has been set aside for non-profit applicants as defined in 7 CFR 3560.11. All loan proposals must be in designated places in accordance with 7 CFR 3560.57. A State or jurisdiction may fund one proposal from this set-aside, which cannot exceed \$1 million. A State could get additional funds from this set-aside if any funds remain after funding one proposal from each participating State. The National Office will inform the State Offices if additional funds are available. If additional set-aside funds remain, each State's second highest scoring proposal will be funded. If there are insufficient funds to fund one loan request from each participating State, selection will be determined nationally by point score

on each State's highest ranking proposal. This method will also be used if additional funds are available to fund more than 1 loan proposal per State where there are insufficient funds to fund a second or more proposal for each State. If there are any funds remaining, they will be handled in accordance with 42 U.S.C. 1485(w)(3). Funds from this set-aside will be available only to nonprofit entities, which may include a partnership that has as its general partner a nonprofit entity or the nonprofit entity's for-profit subsidiary which will be receiving low-income housing tax credits authorized under section 42 of the Internal Revenue Code of 1986. To be eligible for this set-aside, the nonprofit entity must be an organization that:

(a) Will own an interest in the project to be financed and will materially participate in the development and the operations of the project;

(b) Is a private organization that has nonprofit, tax exempt status under section 501(c)(3) or section 501(c)(4) of the Internal Revenue Code of 1986;

(c) Has among its purposes the planning, development, or management of low-income housing or community development projects; and

(d) Is not affiliated with or controlled by a for-profit organization.

(2) *Underserved counties and colonias set-aside.* An amount of \$3,475,587 has been set-aside for loan requests to develop units in the 100 most needy underserved counties or colonias as defined in section 509(f) of the Housing Act of 1949, as amended.

(3) *REAP Set-aside.* An amount of \$2,000,000 has been set-aside to develop units in a REAP zone. Loan requests that are eligible for this set-aside are also eligible for regular Section 515 funds. When requests for this set-aside exceed available funds, selection will be made in accordance with 7 CFR 3560.56(c) and ranking as described earlier in this NOFA. This set-aside is only available until June 30, 2010.

#### VIII. Rental Assistance (RA)

New construction RA will be available for FY 2010 in the amount of \$2,030,000. Unused RA may be allocated from within the State jurisdiction to approved new construction projects. Unused RA can only be allocated within the same State, and shall not be reallocated to another State. New construction RA may not be used in conjunction with a transfer or subsequent loan for repairs or rehabilitation, preservation purposes or for inventory property sales.

#### IX. Appeal Process

Applicants that are rejected will be notified and given appeal rights under 7 CFR part 11. All adverse determinations regarding applicant's eligibility and the awarding of points as a part of the selection process are appealable. Instructions on the appeal process will be provided at the time an applicant is notified of the adverse action.

#### X. Equal Opportunity and Non-Discrimination Requirements

U.S. Department of Agriculture is an equal opportunity provider, employer, and lender.

Borrowers and applicants will comply with the provisions of 7 CFR 3560.2. All housing must meet the accessibility requirements found at 7 CFR 3560.60(d).

All applicants must submit or have on file a valid Form RD 400-1, "Equal Opportunity Agreement" and Form RD 400-4, "Assurance Agreement."

The U.S. Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720-2600 (voice and TDD). To file a complaint of discrimination, write to USDA, Director, Office of Civil Rights, 1400 Independence Avenue, SW., Washington, DC 20250-9410, or call (800) 795-3272 (voice), or (202) 720-6382 (TDD). "USDA is an equal opportunity provider, employer, and lender."

The policies and regulations contained in 7 CFR part 1901, subpart E, apply to this program.

#### XI. USDA Rural Development MFH State Office Contacts

**Note:** Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106-3683, (334) 279-3618, TDD (334) 279-3495, Van McCloud.  
Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761-7740, TDD (907) 761-8905, Deborah Davis.

Arizona State Office, Phoenix Courthouse and Federal Building, 230 North First Ave., Suite 206, Phoenix, AZ 85003-1706, (602) 280-8768, TDD (602) 280-8706, Carol Torres.  
Arkansas State Office, 700 W. Capitol Ave., Room 3416, Little Rock, AR 72201-3225, (501) 301-3250, TDD (501) 301-3063, Greg Kemper.  
California State Office, 430 G Street, #4169, Davis, CA 95616-4169, (530) 792-5821, TDD (530) 792-5848, Debra Moretton.  
Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (720) 544-2923, TDD (800) 659-2656, Mary Summerfield.  
Connecticut, Served by Massachusetts State Office.  
Delaware and Maryland State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904, (302) 857-3615, TDD (302) 857-3585, Pat Baker.  
Florida & Virgin Islands State Office, 4440 NW 25th Place, Gainesville, FL 32606-6563, (352) 338-3465, TDD (352) 338-3499, Tresca Clemmons.  
Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601-2768, (706) 546-2164, TDD (706) 546-2034, Wayne Rogers.  
Hawaii State Office, (Services all Hawaii, American Samoa Guam, and Western Pacific), Room 311, Federal Building, 154 Wai'anuenue Avenue, Hilo, HI 96720, (808) 933-8305, TDD (808) 933-8321, Donald Estes.  
Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378-5630, TDD (208) 378-5644, Roni Atkins.  
Illinois State Office, 2118 West Park Court, Suite A, Champaign, IL 61821-2986, (217) 403-6222, TDD (217) 403-6240, Barry L. Ramsey.  
Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290-3100 (ext. 423), TDD (317) 290-3343, Paul Neumann.  
Iowa State Office, 210 Walnut Street Room 873, Des Moines, IA 50309, (515) 284-4493, TDD (515) 284-4858, Heather Honkomp.  
Kansas State Office, 1303 SW First American Place, Suite 100, Topeka, KS 66604-4040, (785) 271-2721, TDD (785) 271-2767, Mike Resnik.  
Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224-7325, TDD (859) 224-7422, Paul Higgins.  
Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473-7962, TDD (318) 473-7655, Yvonne R. Emerson.  
Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402-0405, (207) 990-9110, TDD (207) 942-7331, Bob Nadeau.

Maryland, Served by Delaware State Office.

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253-4333, TDD (413) 253-4590, Arlene Nunes.

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324-5192, TDD (517) 337-6795, Julie Putnam.

Minnesota State Office, 375 Jackson Street Building, Suite 410, St. Paul, MN 55101-1853, (651) 602-7812, TDD (651) 602-7830, Nancy Schmidt.

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965-4325, TDD (601) 965-5850, Darnella Smith-Murray.

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876-0987, TDD (573) 876-9480, Rachelle Long.

Montana State Office, 900 Technology Blvd., Suite B, Bozeman, MT 59718, (406) 585-2515, TDD (406) 585-2562, Deborah Chorlton.

Nebraska State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437-5734, TDD (402) 437-5093, Linda Anders.

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703-5146, (775) 887-1222 (ext. 25), TDD (775) 885-0633, William Brewer.

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301-5004, (603) 223-6050, TDD (603) 229-0536, Robert McCarthy.

New Jersey State Office, 5th Floor North Suite 500, 8000 Midlantic Dr., Mt. Laurel, NJ 08054, (856) 787-7740, TDD (856) 787-7784, George Hyatt, Jr..

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761-4944, TDD (505) 761-4938, Susan Gauna.

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357 5th Floor, Syracuse, NY 13202, (315) 477-6421, TDD (315) 477-6421, Michael Bosak.

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873-2066, TDD (919) 873-2003, Beverly Casey.

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502, (701) 530-2049, TDD (701) 530-2113, Kathy Lake.

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215-2477, (614) 255-2409, TDD (614) 255-2554, Cathy Simmons.

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074-2654, (405) 742-1070, TDD (405) 742-1007, Ivan S. Graves.

Oregon State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232, (503) 414-3325, TDD (503) 414-3387, Sherryl Gleason.

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110-2996, (717) 237-2281, TDD (717) 237-2261, Martha Eberhart.

Puerto Rico State Office, 654 Munoz Rivera Avenue, IBM Plaza, Suite 601, Hato Rey, PR 00918, (787) 766-5095 (ext. 249), TDD (787) 766-5332, Lourdes Colon.

Rhode Island, Served by Massachusetts State Office.

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253-3432, TDD (803) 765-5697, Larry D. Floyd.

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352-1132, TDD (605) 352-1147, Roger Hazuka or Pam Reilly.

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203-1084, (615) 783-1375, TDD (615) 783-1397, Don Harris.

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742-9765, TDD (254) 742-9712, Scooter Brockette.

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147-0350, (801) 524-4325, TDD (801) 524-3309, Janice Kocher.

Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828-6021, TDD (802) 223-6365, Heidi Setien.

Virgin Islands, Served by Florida State Office.

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287-1596, TDD (804) 287-1753, CJ Michels.

Washington State Office, 1835 Black Lake Blvd., Suite B, Olympia, WA 98512, (360) 704-7730, TDD (360) 704-7760, Susan McKittrick.

Western Pacific Territories, Served by Hawaii State Office.

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505-7500, (304) 284-4872, TDD (304) 284-4836, David Cain.

Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345-7676, TDD (715) 345-7614, Cheryl Halverson.

Wyoming State Office, P.O. Box 11005, Casper, WY 82602, (307) 233-6715, TDD (307) 233-6733, Alan Brooks.

Dated: April 5, 2010.

**Tammye Treviño,**

*Administrator Rural Housing Service.*

[FR Doc. 2010-8455 Filed 4-13-10; 8:45 am]

**BILLING CODE 3410-XV-P**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

#### Notice of Funding Availability: Rural Development Voucher Program

**AGENCY:** Rural Housing Service, USDA.

**ACTION:** Notice of Rural Development Voucher Program Availability

**SUMMARY:** This notice informs the public that the U.S. Department of Agriculture (USDA) in Fiscal Year 2006 established a demonstration Rural Development Voucher Program, as authorized under Section 542 of the Housing Act of 1949 as amended, (without regard to Section 542(b)). This notice informs the public that funding is now available for the Rural Development Voucher Program. The notice also sets forth the general policies and procedures for use of these vouchers for fiscal Year 2010. Pursuant to the requirements in the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010, Public Law 111-80 (October 16, 2009), Rural Development Vouchers are only available to low income tenants of Rural Development-financed multifamily properties where the section 515 loan has been prepaid, either through prepayment or a foreclosure action, prior to the loan's maturity date and after September 30, 2005.

**DATES:** April 14, 2010.

#### FOR FURTHER INFORMATION CONTACT:

Stephanie B.M. White, Director, Multi-Family Housing Portfolio Management Division, Rural Development, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 0782, Washington, DC 20250-0782, telephone (202) 720-1615. Persons with hearing or speech impairments may access this number via TDD by calling the toll-free Federal Information Relay Service at 800-877-8339.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2010 (Pub. L. 111-80) (Appropriations Act, 2010) was enacted on October 16, 2009, and appropriated \$16,400,000 to

USDA for the Rural Development Voucher Program as authorized under Section 542 of the Housing Act of 1949, as amended, 42 U.S.C. 1471 *et. seq.* (without regard to Section 542(b)).

The Appropriations Act, 2010 provided that the Secretary of the U.S. Department of Agriculture shall carry out the Rural Development Voucher Program as follows:

That of the funds made available under this heading, \$16,400,000 shall be available for rural housing vouchers to any low-income household (including those not receiving Rental Assistance) residing in a property financed with a Section 515 loan which has been prepaid after September 30, 2005: *Provided further*, That the amount of such voucher shall be the difference between comparable market rent for the Section 515 unit and the tenant paid rent for such unit: *Provided further*, That funds made available for such vouchers shall be subject to the availability of annual appropriations: *Provided further*, That the Secretary shall, to the maximum extent practicable, administer such vouchers with current regulations and administrative guidance applicable to Section 8 housing vouchers administered by the Secretary of the Department of Housing and Urban Development (HUD).

This notice outlines the process for providing voucher assistance to the eligible impacted families when an owner prepays a Section 515 loan or USDA action results in a foreclosure after September 30, 2005.

### Design Features of the Rural Development Voucher Program

This section sets forth the design features of the Rural Development Voucher Program, including the eligibility of families, the inspection of the units, and the calculation of the subsidy amount.

Rural Development Vouchers under this part are administered by the Rural Housing Service; an agency under the Rural Development mission area, in accordance with requirements set forth in this Notice of Funds Availability (NOFA) and further explained in, "The Rural Development Voucher Program Guide," which can be obtained by contacting any Rural Development office. Contact information for Rural Development offices can be found at <http://offices.sc.egov.usda.gov/locator/app>. These requirements are generally based on the housing choice voucher program regulations of HUD set forth at 24 CFR part 982, unless otherwise noted by this NOFA.

The Rural Development Voucher Program is intended to offer protection to eligible multifamily housing tenants in properties financed through Rural Development's Section 515 Rural Rental Housing Program (515 property) who

may be subject to economic hardship through prepayment of the Rural Development mortgage. When the owner of a 515 property pays off the loan prior to the loan's maturity date (either through prepayment or foreclosure action), the Rural Development affordable housing requirements and rental assistance subsidies generally cease to exist. Rents may increase, thereby making the housing unaffordable to tenants. When a prepayment occurs, whether or not the rent increases, the tenant will be responsible for the full payment of rent. The Rural Development Voucher Program applies to any 515 property where the mortgage is paid off prior to the maturity date in the promissory note and the payment occurs after September 30, 2005. This includes foreclosed properties. Tenants in foreclosed properties are eligible for a Rural Development Voucher under the same conditions as properties that go through the standard prepayment process.

The Rural Development Voucher will help tenants by providing an annual rental subsidy, renewable on the terms and conditions set forth herein and subject to the availability of funds, that will supplement the tenant's rent payment. This program enables a tenant to make an informed decision about remaining in the property, moving to a new property, or obtaining other financial housing assistance. Low-income tenants in the prepaying property are eligible to receive a voucher to use at their current rental property, or to take to any other rental unit in the United States and its territories.

*There are some general limitations on the use of a voucher:*

(1) The rental unit must pass a Rural Development health and safety inspection, and the owner must be willing to accept a Rural Development Voucher;

(2) Also, Rural Development Vouchers cannot be used for units in subsidized housing like Section 8 and public housing where two housing subsidies would result. The Rural Development Voucher may be used for rental units in other properties financed by Rural Development, but it will not be used in combination with the Rural Development Rental Assistance program.

(3) The Rural Development Voucher may not be used to purchase a home.

#### 1. Family Eligibility

In order to be eligible for the Rural Development Voucher under this NOFA, a family must (a) be residing in the Section 515 project on the date of

the prepayment of the Section 515 loan or upon foreclosure by Rural Development; (b) the date of the prepayment or foreclosure must be after September 30, 2005; (c) As required by 42 U.S.C. section 1436a, the tenant must be a United States citizen, United States non-citizen national or qualified alien and will so provide proof of citizenship to Rural Development using one of the following:

Copy of U.S. Passport (unexpired or expired).

Copy of U.S. Military ID card (unexpired).

Copy of U.S. Military dependent's ID card (unexpired).

Copy of a birth certificate issued by a state, county, municipal authority, or outlying possession of the United States bearing an official seal.

Copy of Certificate of U.S. Citizenship (Form N-560 or N-561).

Copy of Certificate of Naturalization (Form N-550 or N-570).

Copy of US Citizen ID card (Form 1-197).

Copy of ID card for use of Resident Citizen in the United States (Form I-179).

Copy of Permanent Resident Card or Alien Registration Receipt Card with photograph (Form I-151 or I-1551).

Copy of Certification of Birth Abroad issued by the Department of State (Form FS-545 or Form DS-1350), and; (d) the family must be a low-income family on the date of the prepayment or foreclosure. A low-income family is a family whose annual income does not exceed 80 percent of the family median income for the area as defined by HUD. HUD's definition of median income can be found at: [http://www.huduser.org/portal/datasets/il/index\\_il2009\\_mfi.html](http://www.huduser.org/portal/datasets/il/index_il2009_mfi.html).

During the prepayment or foreclosure process, Rural Development will evaluate every tenant family to determine if it is low income. If Rural Development determines a family is low-income, immediately following the foreclosure or prepayment Rural Development will send the primary tenant a letter offering the family a voucher and will enclose a Voucher Obligation Request Form. If the family wants to participate in the Rural Development Voucher Program, the tenant has 10 months from the date of prepayment or foreclosure to return the Voucher Obligation Request Form to the local Rural Development office.

If Rural Development makes a determination that the tenant is ineligible for any reason, Rural Development will provide administrative appeal rights pursuant to 7 CFR part 11.

## 2. Obtaining a Voucher

Rural Development will monitor the prepayment request process or foreclosure process. During the prepayment request process or foreclosure process, Rural Development will send all tenants letters notifying them of the voucher program. The tenant notice will include a description of the Rural Development Voucher Program, a Voucher Obligation Request Form, and letter from Rural Development offering the tenant participation in Rural Development Voucher Program. As part of prepayment or foreclosure Rural Development will obtain a rent comparability study for the property *ninety days* prior to the date of prepayment or foreclosure. The rent comparability study will be used to calculate the amount of voucher each tenant is entitled to receive. All tenants will be notified if they are eligible and the amount of the voucher *immediately following* the date of prepayment or foreclosure. Once the primary tenant returns the Voucher Obligation Request Form and proof of citizenship to Rural Development office, a voucher will be issued *within 30 days*. All information necessary for a housing search, explanations of unit acceptability, and Rural Development contact information will be provided by Rural Development to the tenant at the time the Voucher Obligation Form and proof of citizenship is received.

The family receiving a Rural Development Voucher has an initial search period of 60 calendar days from issuance of the voucher to find a housing unit. At its discretion, Rural Development may grant one or more extensions of the initial search period for up to an additional 60 days. The maximum voucher search period for any family participating in the Rural Development Voucher Program is 120 days. If the family needs and requests an extension of the initial search period as a reasonable accommodation to make the program accessible to a disabled family member, Rural Development will extend the voucher search period. If the Rural Development Voucher remains unused after a period of 150 days from original issuance, the Rural Development Voucher will become void, any funding will be cancelled, and the tenant will no longer be eligible to receive a Rural Development Voucher.

## 3. Initial Lease Term

The initial lease term for the housing unit where the family wishes to use the Rural Development Voucher must be for 1 year.

## 4. Inspection of Units and Unit Approval

Rural Development will inspect and determine if the housing standard is acceptable within 30 days of Rural Development's receipt of the HUD Form 52517. The inspection standards currently in effect for the Rural Development Section 515 Multi-Family Housing Program apply to the Rural Development Voucher Program. Rural Development must inspect the unit and ensure that the unit meets the housing inspection standards set forth at 7 CFR Section 3560.103. Under no circumstances may Rural Development make voucher rental payments for any period of time prior to the date that Rural Development physically inspects the unit and determines the unit meets the housing inspection standards. In the case of properties financed by Rural Development under the Section 515 program, Rural Development may accept the results of physical inspections performed no more than one year prior to the date of receipt by Rural Development of Form HUD 52517, in order to make determinations on acceptable housing standards. Before approving a family's assisted tenancy or executing a Housing Assistance Payments contract, Rural Development must determine that the following conditions are met: (1) The unit has been inspected by Rural Development and passes the housing standards inspection or has otherwise been found acceptable as noted previously; and (2) the lease includes the HUD Tenancy Addendum. A copy of the HUD Tenancy Addendum will be provided when the tenant is informed he/she is eligible for a voucher.

Once the conditions in the above paragraph are met, Rural Development will approve the unit for leasing. Rural Development will then execute with the owner a Housing Assistance Payments (HAP) contract, Form HUD-52641. The HAP contract must be executed before Rural Development Voucher payments can be made. Rural Development will use its best efforts to execute the HAP contract on behalf of the family before the beginning of the lease term. In the event that this does not occur, the HAP contract may be executed up to 60 calendar days after the beginning of the lease term. If the HAP contract is executed during this 60-day period, Rural Development will pay retroactive housing assistance payments to cover the portion of the approved lease term before execution of the HAP contract. Any HAP contract executed after the 60-day period is untimely, and Rural Development will not pay any housing

assistance payment to the owner for that period. In establishing the effective date of the voucher HAP contracts, Rural Development may not execute a housing assistance payments contract that is effective prior to the Section 515 loan prepayment.

## 5. Subsidy Calculations for Rural Development Vouchers

As stated earlier, if eligible the tenant will be notified of the voucher amount immediately following prepayment or foreclosure. The monthly housing assistance payment for the Rural Development Voucher Program is the difference between the comparable market rent for the family's former Section 515 unit and the tenant's rent contribution on the date of the prepayment. The tenant can appeal Rural Development's determination of the voucher amount through USDA's administrative appeal process, see 7 CFR part 11. The voucher amount will be based on the comparable market rent; the voucher amount will never exceed the comparable market rent at the time of prepayment for the tenant's unit if the tenant chooses to stay in-place. Also, in no event may the Rural Development Voucher payment exceed the actual tenant lease rent. The amount of the voucher does not change over time or if the tenant chooses to move to a more expensive location.

## 6. Mobility and Portability of Rural Development Vouchers

An eligible family that is issued a Rural Development Voucher may elect to use the assistance in the same project or may choose to move to another location. The Rural Development Voucher may be used at the prepaid property or any other rental unit in the United States and its territories that passes Rural Development physical inspection standards, where the owner will accept a Rural Development Voucher and execute a Form HUD 52641. Tenants and Landlords must inform Rural Development if the tenant plans to move during the HAP agreement term, even to a new unit in the same complex. All moves (within a complex or to another complex) require a new obligation and a new HAP agreement. In addition, HUD Section 8 and Federally-assisted public housing is excluded from the Rural Development Voucher Program because these units are already federally subsidized. Tenants with a Rural Development Voucher would have to give up the Rural Development Voucher to accept the assistance at those properties. The Rural Development Voucher may be used in other properties financed by



Rural Development, but it cannot be used in combination with the Rural Development Rental Assistance program. Tenants with a Rural Development Voucher that apply for housing in a Rural Development-financed property must choose between using the voucher or Rental Assistance. If the tenant relinquishes the Rural Development Voucher in favor of Rental Assistance, the tenant is not eligible to receive another Rural Development Voucher.

#### 7. Term of Funding and Conditions for Renewal for Rural Development Vouchers

The Rural Development Voucher Program provides voucher assistance for 12 monthly payments. The voucher is issued to the household in the name of the primary tenant. If the primary tenant dies during the term of the voucher, after Rural Development receives notice of the death, the use of the voucher passes to the co-tenant.

The voucher is renewable subject to the availability of appropriations to the USDA. In order to renew a voucher, a tenant must return a signed Voucher Obligation Form which will be sent to the tenant within 60–90 days before the current voucher expires.

In order to ensure continued eligibility to use the Rural Development Voucher, at the time they apply for renewal of the voucher, tenants must certify that the current family income does not exceed 80% of family median income. Rural Development will advise the tenant of the maximum income level when the renewal Voucher Obligation Form is sent.

Renewal requests will have no preference and will be processed as a new application as described in this NOFA.

#### 8. Non-Discrimination Statement

“The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotope, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD). To file a complaint of discrimination write to USDA, Director, Office of Civil Rights,

1400 Independence Avenue, SW., Washington, DC 20250–9410 or call (800) 795–3272 (voice) or (202) 720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender.”

#### 9. Paperwork Reduction Act

The information collection requirements contained in this document are those of the Housing Choice Voucher Program, which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0169. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Dated: April 6, 2010.

**Tammye Treviño,**

*Administrator, Rural Housing Service.*

[FR Doc. 2010–8454 Filed 4–13–10; 8:45 am]

**BILLING CODE 3410–XV–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Proposed Information Collection; Comment Request; Atlantic Surfclam and Ocean Quahog Framework Adjustment I

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA).

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before June 14, 2010.

**ADDRESSES:** Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at [dHynek@doc.gov](mailto:dHynek@doc.gov)).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to Tim Cardiasmenos, (978)

281–9204 or [Timothy.Cardiasmenos@noaa.gov](mailto:Timothy.Cardiasmenos@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

Under the Magnuson-Stevens Fishery Conservation and Management Act, the Secretary of Commerce (Secretary) has the responsibility for the conservation and management of marine fishery resources. Much of this responsibility has been delegated to the NOAA's National Marine Fisheries Service (NMFS). Under this stewardship role, the Secretary was given certain regulatory authorities to ensure the most beneficial uses of these resources. One of the regulatory steps taken to carry out the conservation and management objectives is to collect data from users of the resource. Thus, as regional Fishery Management Councils develop specific Fishery Management Plans (FMP), the Secretary has promulgated rules for the issuance and use of a Vessel Monitoring System (VMS) and to obtain fishery-dependent data to monitor, evaluate, and enforce fishery regulations.

Framework Adjustment 1 (FW1) to the Atlantic Surf Clam and Ocean Quahog FMP contains a VMS requirement for surfclam and ocean quahog vessels participating in the individual transferable quota program and limited access Maine mahogany quahog vessels. VMS was identified as a need in this fishery to (1) Eliminate the requirement to notify NMFS Office of Law Enforcement (OLE) via telephone prior to beginning a fishing trip,

(2) facilitate the monitoring of areas closed to fishing due to environmental degradation (e.g., harmful algal blooms and former dump sites for military munitions), and

(3) facilitate the monitoring of borders between state and Federal fishing jurisdictions.

##### II. Method of Collection

All information is submitted electronically through VMS units.

##### III. Data

*OMB Control Number:* 0648–0558.

*Form Number:* None.

*Type of Review:* Regular submission.

*Affected Public:* Business and other for-profit organizations.

*Estimated Number of Respondents:* 62.

*Estimated Time Per Response:* 1 minute per trip for VMS declaration; 5 minutes for VMS certification form; 5 minutes for telephone call to verify proper VMS installation; 30 minutes for VMS power-down authorization.



*Estimated Total Annual Burden Hours:* 100.

*Estimated Total Annual Cost to Public:* \$31,680.

#### IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 9, 2010.

**Glenna Mickelsson,**

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010-8516 Filed 4-13-10; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-863]

#### Honey From the People's Republic of China: Notice of Amended Final Results Pursuant to Final Court Decision

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On November 18, 2008, the Court of International Trade ("CIT") affirmed the Department's remand determination and entered judgment in *Shanghai Eswell Enterprise Co., Ltd., Jinfu Trading Co., Ltd., and Zhejiang Native Produce and Animal By-Products Import & Export Group Corp. v. United States*, Court 2008 Ct. Intl. Trade LEXIS 123 (November 18, 2008) ("*Shanghai Eswell I*"), which challenged certain aspects of the Department of Commerce's ("the Department") findings in *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873 (July 6, 2005) ("*Final Results*")

and the accompanying Issues and Decision Memorandum. Additionally, on appeal, on November 5, 2009, the Court of Appeals for the Federal Circuit ("CAFC") affirmed the CIT's ruling in *Eswell II*. See *Shanghai Eswell Enterprise Co., Ltd., Jinfu Trading Co., Ltd., and Zhejiang Native Produce and Animal By-Products Import & Export Group Corp. v. United States*, 2009 U.S. App. LEXIS 24374 (Fed. Cir. Nov. 5, 2009) ("*Shanghai Eswell III*"). As explained below, in accordance with the order contained in the CIT's November 18, 2008 judgement, *Shanghai Eswell II*, the Department is amending the *Final Results* of the review to apply the recalculated surrogate financial ratios in the Department's normal value calculation.

**DATES:** *Effective Date:* April 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Julia Hancock or Scot T. Fullerton, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 4003, Washington, DC 20230; telephone: (202) 482-1394 or (202) 482-1386, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 6, 2005, the Department completed its *Final Results* of the second administrative review of honey from the People's Republic of China ("PRC"). On September 13, 2007, the CIT remanded the following issues to the Department for further explanation consistent with its opinion and Order: (1) The surrogate value for raw honey and the evidence indicating a decline in honey prices; (2) the denial of a circumstance of sale adjustment for sales commissions; (3) the failure to include MHPC's expenses for jars, corks and honey machines in the financial ratio calculation; and (4) the finding Jinfu PRC was unaffiliated with Jinfu USA. See *Shanghai Eswell Enterprise Co., Ltd., et al. v. United States*, 31 C.I.T. 1570, (Ct. Int'l Trade 2007). Pursuant to the CIT's remand instructions, the Department: (1) Addressed record evidence which indicated a decline in export prices during the second half of the POR and explained why we have refrained from considering these data in calculating a surrogate value for raw honey; (2) explained that there was insufficient evidence of an exact correlation between respondents' and the surrogate producer's expenses and continued to deny circumstances of sale adjustment for sales commissions; (3) revised our financial ratio calculations to include reported expenses for jars and corks as direct materials used for

producing finished honey and provided further explanation regarding our finding that honey machine purchases do not constitute direct expenses; and (4) examined the record evidence and continued to find that Jinfu PRC and Jinfu USA were not affiliated prior to October 25, 2003, because Jinfu PRC's CEO did not exercise control over Jinfu USA prior to this date.

On February 11, 2008, the Department filed its final results of redetermination pursuant to *Eswell I* with the CIT. See *Final Results of Redetermination Pursuant to Court Remand: Shanghai Eswell Enterprise Co., Ltd. v. United States*, Court No. 06-00430 (February 11, 2008) ("*Eswell I*"). As noted above, both the CIT and the Federal Circuit affirmed the agency's remand determination. See *Shanghai Eswell II*, *Shanghai Eswell III*. Because the Department, in its remand determination, revised its financial ratio calculations to include expenses for jars and corks as direct materials used to produce finished honey, we must revise the surrogate financial ratios and margin calculations for *Eswell Enterprise Co., Ltd.*, Jinfu and Zhejiang Native Produce and Animal By-Products Import & Export Group Corp.

#### Amendment to the Final Determination

Because there is now a final and conclusive court decision, effective as of the publication date of this notice, we are amending the *Final Results* and revising the weighted average dumping margins for the following companies:

##### HONEY FROM THE PRC

Manufacturer/exporter	Weighted-average margin (percent)
Shanghai Eswell Enterprise Co., Ltd .....	27.64
Jinfu Trading Co., Ltd .....	58.44
Zhejiang Native Produce and Animal By-Products Import & Export Group Corp .....	34.81

We have calculated: (1) Shanghai Eswell Enterprise Co., Ltd.'s ("Shanghai Eswell") company-specific antidumping margin as 27.64 percent; (2) Jinfu Trading Co., Ltd.'s ("Jinfu Trading") company-specific antidumping margin as 58.44 percent; and (3) Zhejiang Native Produce and Animal By-Products Import & Export Group Corp.'s ("Zhejiang Native") company-specific antidumping margin as 34.81 percent. See the Memorandum to the File from Michael Quigley, "Analysis Memorandum for the Final Results of the Redetermination of the

Redetermination of the Financial Ratios Remand for Antidumping Duty Administrative Review of Honey from the People's Republic of China for Shanghai Eswell Enterprise Co., Ltd.," dated February 11, 2008 ("Eswell Final Analysis Memo"); Memorandum to the File from Michael Quigley, "Analysis Memorandum for the Final Results of the Redetermination of the Financial Ratios Remand for Antidumping Duty Administrative Review of Honey from the People's Republic of China for Jinfu Trading Co., Ltd.," dated February 11, 2008 ("Jinfu Trading Final Analysis Memo"); the Memorandum to the File from Michael Quigley, "Analysis Memorandum for the Final Results of the Redetermination of the Financial Ratios Remand for Antidumping Duty Administrative Review of Honey from the People's Republic of China for Zhejiang Native Produce and Animal By-Products Import & Export Group Corp.," dated February 11, 2008 ("Zhejiang Native Final Analysis Memo").

There have been no other changes to this analysis, except for the revised financial ratio calculations to include expenses for jars and corks as direct materials used to producing finished honey, for these amended final results. In accordance with the Department's practice of issuing importer-specific assessment rates, we will instruct the United States Customs and Border Protection ("CBP") to apply the importer specific assessment rate for Shanghai Eswell's, Jinfu Trading's, and Zhejiang Native's respective exports to the United States. See Eswell Final Analysis Memo at Attachment 3; Jinfu Trading Final Analysis Memo at Attachment 3; and Zhejiang Native Final Analysis Memo at Attachment 3. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the amended final results of this review.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 5, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-8559 Filed 4-13-10; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[Docket No. 0907081109-0180-06]

RIN 0648-ZC10

#### Availability of Grant Funds for FY 2010

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of availability of grant funds for FY 2010.

**SUMMARY:** NOAA publishes this notice to solicit proposals for grant funding for three NOAA Sea Grant Programs: (1) Sea Grant Aquaculture Research Program 2010; (2) NOAA Sea Grant Aquaculture Extension and Technology Transfer 2010; and (3) NOAA Sea Grant Aquatic Invasive Species 2010. This notice supplements the agency's solicitation for applications published on January 19, 2010 entitled "Availability of Grant Funds for Fiscal Year 2010" (75 FR 3209).

**DATES:** Proposals must be received by the date and time specified under each program listed in the **SUPPLEMENTARY INFORMATION** section of this document.

**ADDRESSES:** Proposals must be submitted to the program address listed in the **SUPPLEMENTARY INFORMATION** section of this document. NOAA's discretionary grant fund notices may be found on the Internet at Grants.gov. The URL for Grants.gov is <http://www.grants.gov>.

**FOR FURTHER INFORMATION CONTACT:** For those applicants without Internet access, you may request a copy of the full funding opportunity announcement and/or application kit from the person listed as the information contact under each program.

**SUPPLEMENTARY INFORMATION:** Applicants must comply with all requirements contained in the Federal Funding Opportunity announcement for each of the programs listed in this notice. The Federal Funding Opportunity announcements are available at <http://www.grants.gov>.

The list of grant opportunities under NOAA Project Competitions (below) describes the basic information and requirements for the competitive grant/cooperative agreement programs offered by NOAA. These programs are open to anyone who meets the eligibility criteria specified under each entry. To be considered for an award under one of the described competitive grant/cooperative agreement programs, eligible applicants must submit a

complete and responsive application to the appropriate address by the deadline specified in this notice. An award is made upon conclusion of the evaluation and selection process for the respective program.

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  - 3. NOAA Sea Grant Aquatic Invasive Species 2010
- III. Relevant NOAA Mission Goal
- IV. Classification

#### I. Background

In this notice, NOAA announces that three programs are making funds available for financial assistance awards. Each entry for the following grant opportunities provides: A description of the program, funding availability, statutory authority, Catalog of Federal Domestic Assistance (CFDA) number, application deadline, address for submitting proposals, selection criteria, evaluation criteria, information contacts, eligibility requirements, cost sharing requirements, and intergovernmental review under Executive Order 12372. Interested applicants should consult the January 19, 2010 **Federal Register** Notice entitled "Availability of Grant Funds for Fiscal Year 2010" (75 FR 3209) for additional information about submitting an application to NOAA.

#### II. NOAA Project Competitions

##### *Oceanic and Atmospheric Research (OAR)*

##### 1. NOAA Sea Grant Aquaculture Research Program 2010

**Summary Description:** NOAA Sea Grant will make available up to \$6,000,000 for a national competition to fund aquaculture research projects for FY 2010 to FY 2011, as part of the overall plan to support the development of environmentally and economically sustainable ocean, coastal or Great Lakes aquaculture. The Federal Funding Opportunity (FFO) announcement for this competition is available on <http://grants.gov> under FFO number NOAA-OAR-SG-2010-2002488.

**Funding Availability:** Depending on FY 2011 Congressional appropriations and the quality of proposals, Sea Grant expects to have available up to \$6,000,000 for aquaculture research projects for FY 2010 to FY 2011, with individual research projects funded at a total of \$50,000 to \$400,000 in federal

funding (or \$75,000 to \$600,000 total funding, including required non-Federal matching funds) for up to a two-year period. Additional match may be applied, if appropriate. Given the anticipated amount of funding and the anticipated number and quality of proposals submitted, approximately 15 projects of average Federal funding of \$400,000 are anticipated.

*Statutory Authority:* 33 U.S.C. 1121 *et seq.*

*Catalog of Federal Domestic Assistance (CFDA) Number:* 11.417, Sea Grant Support

**Application Deadline:** Proposals must be submitted by 5 p.m. Eastern Time, May 25, 2010, regardless of where they are submitted. State Sea Grant Programs must forward applications unchanged to Grants.gov by 5:00 p.m. Eastern Time, June 8, 2010. Applications that are not received by the deadline will not be reviewed.

**Address for Submitting Proposals:** Applicants from Sea Grant states must submit applications to the addresses provided by the appropriate State Sea Grant Program. Contact information for Sea Grant Programs is available at [http://www.seagrants.noaa.gov/ansi/2010/eligible\\_2010.htm](http://www.seagrants.noaa.gov/ansi/2010/eligible_2010.htm) or may also be obtained by contacting the Information Contact listed below.

Applicants NOT From Sea Grant States may submit their applications to a nearby State Sea Grant Program office, or directly to Grants.gov (by the same date that applicants in Sea Grant states must send to their Sea Grant Program).

If submitted electronically via Grants.gov, please indicate FFO number NOAA-OAR-SG-2010-2002488 in the application.

If a Sea Grant Program or an applicant not from a Sea Grant State does not have proven internet access, contact the Information Contact listed below for submission instructions.

**Evaluation Criteria:**

1. *Importance and/or relevance and applicability of proposed project to the National Sea Grant program goals* (maximum 25 points).

This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities. For this competition, this ascertains:

(a) If the impact of the proposed work will increase domestic marine aquaculture production, contribute to environmental sustainability, and advance the state of the industry, science, or state-of-the-art methods for marine aquaculture;

(b) The degree to which the proposal contributes to the following three top priorities for FY 2010 and FY 2011:

(1) Research on technical aspects of innovative mitigation or 'smart design' approaches to aquaculture, such as integrated multi-trophic aquaculture or other ways to design aquaculture production in an ecosystem management context; (2) Development of planning tools or approaches to aid site selection for new or expanded aquaculture facilities in the context of coastal and marine spatial planning efforts, including planning and zoning tools for coastal managers; and (3) Research on the social and economic issues associated with current and new marine aquaculture; and

(c) If the proposal includes a concrete, unambiguous specific desired outcome, and has a good chance of achieving that outcome (including meeting stated performance measure targets).

2. *Technical/scientific merit* (maximum 35 points).

This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. For this competition, this ascertains:

(a) The quality of the work plan, and if it includes (if appropriate) plans for identifying and conducting future research or other future actions;

(b) If the proposal includes all components (research, outreach, extension, etc) necessary to achieve the desired outcome and an effective plan to integrate all components;

(c) If the proposal includes one or more of the performance measures identified in section I.A of the FFO, with targets. If it does not include these, does it include well-formed, outcome-based performance measures, with targets, and credibly demonstrate how achieving these performance measure targets will lead to increased targets for one or more of the performance measures in section I.A of the FFO; and

(d) If the proposal includes a way to objectively determine its success at achieving its outcomes.

3. *Overall qualifications of applicants* (maximum 10 points).

This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. This includes their record of achievement with previous funding.

4. *Project costs* (maximum 15 points).

The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. *Outreach and education* (maximum 15 points).

This criterion assesses whether this project provides a focused and effective education and outreach strategy

regarding NOAA's mission to protect the Nation's natural resources. For this competition, this ascertains if the proposal includes a clear and objective work plan for outreach strategy and specific activities to maximize dissemination of results to stakeholders.

**Selection Procedures and Factors:**

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. A merit review will also be conducted to produce a rank order of the proposals. The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the administrative and/or merit review(s) and selection factors listed below. The Selecting Official selects proposals after considering the administrative and/or merit review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final award recommendations to the Grants Officer authorized to obligate the funds.

The selection factors that the Selecting Official may use are:

1. Availability of funding.
2. Balance and distribution of funds.
  - a. Geographically.
  - b. By type of institutions.
  - c. By type of partners.
  - d. By research areas.
  - e. By project types.
3. Duplication of other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a National Environmental Protection Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

**Information Contacts:** Agency contact for information regarding the NOAA Sea Grant Aquaculture Research Program 2010 should be directed to Dr. Gene Kim, 301-734-1281; via e-mail at [oar.hq.sg.aquaculture@noaa.gov](mailto:oar.hq.sg.aquaculture@noaa.gov); Mailing Address: NOAA Sea Grant;

1315 East-West Highway, SSMC3, R/SG; Silver Spring, MD 20910.

**Eligibility:** Institutions of higher education, nonprofit organizations, commercial organizations, State, local and Indian tribal governments and individuals are eligible. Federal agencies and their personnel are not permitted to receive Federal funding under this competition; however, Federal scientists can serve as partners or co-Principal Investigators on research proposals. Directors of the state Sea Grant Programs are not eligible to compete for funds under this announcement, although for administrative purposes, they will be considered to be the Principal Investigator for all awards made to their state programs.

**Cost Sharing Requirements:** Non-Federal matching funds equal to at least 50 percent of the Federal funding request must be provided. In-kind contributions can count towards this matching requirement.

**Intergovernmental Review:** Applications under this Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

## 2. NOAA Sea Grant Aquaculture Extension and Technology Transfer 2010

**Summary Description:** NOAA Sea Grant will make available up to \$4,800,000 for a national competition to fund aquaculture extension efforts for FY 2010 to FY 2012, as part of the overall plan to enhance aquaculture extension (including technology transfer) to support the development of environmentally and economically sustainable ocean, coastal or Great Lakes aquaculture. Aquaculture extension is expected to be conducted in cooperation and partnership with state and Federal aquaculture agencies and regional management efforts. The Federal Funding Opportunity (FFO) announcement for this competition is available on <http://grants.gov> under FFO number NOAA-OAR-SG-2010-2002491.

**Funding Availability:** Depending on FY 2011 and FY 2012 Congressional appropriations and the quality of proposals, Sea Grant expects to have available up to \$4,800,000 for aquaculture extension efforts for FY 2010 to FY 2012. Each Sea Grant Program can submit up to two separate proposals. Each individual proposal can be requested at a total of \$50,000 to \$300,000 in Federal funding (or \$75,000 to \$450,000 total funding, including required non-Federal matching funds) for up to a three-year period; however,

the maximum annual amount for each proposal is \$100,000 in Federal funding per year. Given the anticipated amount of funding and the anticipated number and quality of proposals submitted, approximately 16 projects of average Federal funding \$300,000 are anticipated.

**Statutory Authority:** 33 U.S.C. 1121 *et seq.*

**Catalog of Federal Domestic Assistance (CFDA) Number:** 11.417, Sea Grant Support.

**Application Deadline:** Proposals must be submitted by 5 p.m. Eastern Time, May 25, 2010. Applications that are not received by the deadline will not be reviewed.

**Address for Submitting Proposals:** Proposals must be submitted through Grants.gov by the Sea Grant Program. If an applicant does not have internet access, contact the Information Contact listed below.

### Evaluation Criteria:

1. Importance and/or relevance and applicability of proposed project to the National Sea Grant program goals (maximum 25 points).

This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, federal, regional, State, or local activities. For this competition, this ascertains:

(a) The degree of impact of the proposed work to increase domestic ocean, coastal or Great Lakes aquaculture production, contribute to environmental sustainability, and advance the state of the industry, science, or state-of-the-art methods for marine aquaculture; and

(b) The degree to which the proposal includes a concrete, unambiguous specific desired outcome, and has a good chance of achieving that outcome (including meeting stated performance measure targets).

2. Technical/scientific merit (maximum 20 points).

This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. For this competition, this ascertains:

(a) The quality of the work plan, including (if appropriate) plans for identifying and conducting future research, extension, or other actions;

(b) If the proposal includes all components (research, outreach, extension, etc) necessary to achieve the desired outcome. Is there an effective plan for integrating all components?;

(c) If the proposal includes one or more of the performance measures identified in section I.A of the FFO,

with targets. If it does not include these, does it include well-formed, outcome-based performance measures, with targets, and credibly demonstrate how achieving these performance measure targets will lead to increased targets for one or more of the performance measures in section I.A of the FFO; and

(d) If the proposal includes a way to objectively determine its success at achieving its outcomes.

3. Overall qualifications of applicants (maximum 10 points).

This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. This includes their record of achievement with previous funding.

4. Project costs (maximum 20 points).

The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame. This includes assessment of the described plans for how the aquaculture extension personnel capacity will be maintained when funding from this competition terminates.

5. Outreach and education (maximum 25 points).

Assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. For this competition, this ascertains if the proposal includes a clear and objective work plan for outreach strategy and specific activities to maximize dissemination of results to stakeholders.

### Selection Procedures and Factors:

Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. A merit review will also be conducted to produce a rank order of the proposals.

The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the administrative and/or merit review(s) and selection factors listed below. The Selecting Official selects proposals after considering the administrative and/or merit review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final award recommendations to the Grants Officer authorized to obligate the funds.

The selection factors that the Selecting Official may use are:

1. Availability of funding.
2. Balance and distribution of funds.
  - a. Geographically.
  - b. By type of institutions.
  - c. By type of partners.
  - d. By research areas.
  - e. By project types.
3. Duplication of other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a National Environmental Protection Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

**Information Contacts:** Agency contact for information regarding the NOAA Sea Grant Aquaculture Extension and Technology Transfer 2010 should be directed to Dr. Gene Kim, 301-734-1281; via e-mail at [oar.hq.sg.aquaculture@noaa.gov](mailto:oar.hq.sg.aquaculture@noaa.gov); Mailing Address: NOAA Sea Grant; 1315 East-West Highway, SSMC3, R/SG; Silver Spring, MD 20910.

**Eligibility:** The following entities are eligible to apply to this funding opportunity: Sea Grant College Programs, Sea Grant Institutional Programs, the Guam Sea Grant Project, the Lake Champlain Sea Grant Project, and the Sea Grant National Law Center.

Other interested parties are encouraged to work with the Sea Grant programs in their region to explore opportunities for partnering. Contact information for all eligible state Sea Grant programs can be found at [http://www.seagrant.noaa.gov/hsi/2010/eligible\\_2010.htm](http://www.seagrant.noaa.gov/hsi/2010/eligible_2010.htm) or may also be obtained by contacting the Information Contact listed above.

**Cost Sharing Requirements:** Non-Federal matching funds equal to at least 50 percent of the Federal funding request must be provided. In-kind contributions can count towards this matching requirement.

**Intergovernmental Review:** Applications under this Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

### 3. NOAA Sea Grant Aquatic Invasive Species 2010

**Summary Description:** NOAA Sea Grant will make available \$2,000,000 in 2010 and up to \$2,000,000 in 2011, if

appropriations are available, to Sea Grant programs to support integrated projects of research, outreach, extension, education and/or management, addressing regional aquatic invasive species priorities for U.S. coastal, ocean, and Great Lakes areas. The opportunity seeks especially to support projects that address NOAA-relevant regional aquatic invasive species priorities identified by Sea Grant Regional Research Plans, by NOAA Regional Collaboration Teams, by the Aquatic Nuisance Species (ANS) Task Force Regional Panels, and in ANS State Management Plans. The Federal Funding Opportunity (FFO) announcement for this competition is available on <http://grants.gov> under FFO number NOAA-OAR-SG-2010-2002380.

**Funding Availability:** A total of \$2,000,000 of Federal Sea Grant funds in FY 2010 and up to \$2,000,000 in FY 2011 is anticipated to be offered, depending on appropriations. Up to 11 awards are anticipated to be made, depending on the number, quality, and request amounts of applications received. Federal funding requests must be no higher than \$400,000 and no lower than \$20,000. An exception to the \$400,000 upper limit is if a single integrated project addresses an invasive species issue in multiple Sea Grant regions. If this is done, the maximum amount that can be requested is \$400,000 times the number of regions involved.

**Statutory Authority:** Authority for this FFO is provided by 33 U.S.C. 1121 et seq., as amended.

**Catalog of Federal Domestic Assistance (CFDA) Number:** 11.417, Sea Grant Support.

**Application Deadline:** Applications must be received by 5 p.m. Eastern time May 17, 2010. Applications that are not received by the deadline will not be reviewed.

**Address for Submitting Proposals:** Applications should be submitted to Grants.gov. Applicants who do not have access to the Internet should request submission information from the Information Contact listed below.

#### Evaluation Criteria:

1. Importance and/or relevance and applicability of proposed project to the program goals (40 percent).

This ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, State, or local activities. For this competition, this criterion ascertains:

(a) Does the proposal address a significant recognized regional aquatic invasive species issue?

(b) If the proposed project is successful, will it contribute significantly to the resolution of this issue?

(c) Does the proposal include a concrete, unambiguous specific desired outcome, and does the project have a good chance of achieving that outcome (including meeting stated performance measure targets)?

#### 2. Technical/scientific merit (40 percent).

This assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives. For this competition, this criterion assesses:

(a) The quality of the work plan, including (if appropriate) plans for identifying and selecting future research or other future actions;

(b) Does the proposal include all components (research, outreach, extension, etc) necessary to achieve the desired outcome? Is there an effective plan for integrating all components?

(c) Does the proposal include one or more of the performance measures identified in section I.A of the FFO, with targets? If it does not include these, does it include well-formed, outcome-based performance measures, with targets, and credibly demonstrate how achieving these performance measure targets will lead to increased targets for one or more of the performance measures in section I.A of the FFO?

(d) Does the proposal include a way to objectively determine its success at achieving its outcomes?

#### 3. Overall qualifications of applicants (5 percent).

This ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project. For this competition this criterion ascertains whether the proposed leader and team possess the necessary education, experience, breadth, facilities, and administrative resources to accomplish the project.

#### 4. Project costs (10 percent).

The Budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame. For this competition, this criterion also assesses the degree to which costs have been minimized and inter-institutional and partnership activities have been incorporated in order to leverage funds and resources.

#### 5. Outreach and education (5 percent).

NOAA assesses whether this project provides a focused and effective

education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources. For this competition, this criterion assesses the quality of proposed outreach and education activities to contribute to achieving the desired objective, as well as to effectively communicate the results of this project after it is completed, to maximize its usefulness in future similar efforts.

**Selection Procedures and Factors:** Upon receipt of a full application by NOAA, an initial administrative review will be conducted to determine compliance with requirements and completeness of the application. A merit review will also be conducted to produce a rank order of the proposals. The NOAA Program Officer may review the ranking of the proposals and make recommendations to the Selecting Official based on the administrative and/or merit review(s) and selection factors listed below. The Selecting Official selects proposals after considering the administrative and/or merit review(s) and recommendations of the Program Officer. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors below. The Program Officer and/or Selecting Official may negotiate the funding level of the proposal. The Selecting Official makes final award recommendations to the Grants Officer authorized to obligate the funds.

The selection factors that the Selecting Official may use are:

1. Availability of funding.
2. Balance and distribution of funds.
  - a. Geographically.
  - b. By type of institutions.
  - c. By type of partners.
  - d. By research areas.
  - e. By project types.
3. Duplication of other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or Participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a National Environmental Protection Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

**Information Contact:** Dorn Carlson, National Sea Grant College Program, 1315 East-West Highway, R/SG, Rm 11710, Silver Spring, MD 20910; tel:

(301) 713-1080; e-mail: [invasive.species@noaa.gov](mailto:invasive.species@noaa.gov).

**Eligibility:** The following entities are eligible to apply to this funding opportunity: Sea Grant Colleges, Sea Grant Institutional Programs, the Lake Champlain Sea Grant Project, the Guam Sea Grant Project, and the Sea Grant National Law Center.

Other interested parties are encouraged to work with the Sea Grant programs in their region to explore opportunities for partnering. Contact information for all eligible state Sea Grant programs and projects can be found at [http://www.seagrant.noaa.gov/nsi/2010/eligible\\_2010.htm](http://www.seagrant.noaa.gov/nsi/2010/eligible_2010.htm) or may also be obtained by contacting Dorn Carlson listed in Agency Contacts.

**Cost Sharing Requirements:** Matching funds equal to at least 50 percent of the Federal funding request must be provided.

**Intergovernmental Review:** Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

### III. Relevant NOAA Mission Goal

*Protect, Restore and Manage the Use of Coastal and Ocean Resources Through Ecosystem-Based Management*

Coastal areas are among the most developed in the Nation. More than half the population lives on less than one-fifth of the land in the contiguous United States. Furthermore, employment in near shore areas is growing three times faster than population. Coastal and marine waters support over 28 million jobs and provide a tourism destination for nearly 90 million Americans a year. The value of the ocean economy to the United States is over \$115 billion. The value added annually to the national economy by the commercial and recreational fishing industry alone is over \$48 billion. U.S. aquaculture sales total almost \$1 billion annually. With its Exclusive Economic Zone of 3.4 million square miles, the United States manages the largest marine territory of any nation in the world.

*Funded proposals should help achieve the following outcomes:*

1. Healthy and productive coastal and marine ecosystems that benefit society.
2. A well-informed public that acts as a steward of coastal and marine ecosystems.

**Program Names for this Mission Goal:**

1. NOAA Sea Grant Aquaculture Research Program 2010.
2. NOAA Sea Grant Aquaculture Extension and Technology Transfer 2010.

3. NOAA Sea Grant Aquatic Invasive Species 2010.

### IV. Classification

#### *Limitation of Liability*

In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

#### *Universal Identifier*

For programs that have deadline dates on or after October 1, 2003, applicants should be aware that they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the October 30, 2002 **Federal Register**, (67 FR 661770 for additional information.

Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1-866-705-5711 or via the Internet (<http://www.dunandbradstreet.com>).

#### *National Environmental Policy Act (NEPA)*

NOAA must analyze the potential environmental impacts, as required by the National Environmental Policy Act (NEPA), for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the following NOAA NEPA Web site: <http://www.nepa.noaa.gov/>, including our NOAA Administrative Order 216-6 for NEPA, [http://www.nepa.noaa.gov/NAO216\\_6\\_TOC.pdf](http://www.nepa.noaa.gov/NAO216_6_TOC.pdf), NEPA Questionnaire, <http://www.nepa.noaa.gov/questionnaire.pdf>, and the Council on Environmental Quality implementation regulations, <http://ceq.eh.doe.gov/nepa/regs/ceq/toc—ceq.htm>. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be

requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required. Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

*Compliance With Department of Commerce Bureau of Industry and Security Export Administration Regulations*

a. This section applies to the extent that this notice results in financial assistance awards involving access to export-controlled information or technology.

b. In performing a financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient will then be responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-NOAA facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.

c. Definitions.

1. Deemed export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. 15 CFR 734.2(b)(2)(ii).

2. Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 CFR parts 730 *et seq.*), implemented by the DOC Bureau of Industry and Security, or the International Traffic Arms Regulations (ITAR) (22 CFR parts 120–130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense

articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.

d. The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of a financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.

e. Nothing in the terms of this section is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

f. The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under the financial assistance award that may involve access to export-controlled information technology.

*NOAA implementation of Homeland Security Presidential Directive—12*

If the performance of a financial assistance award, if approved by NOAA, requires recipients to have physical access to Federal premises for more than 180 days or access to a Federal information system, any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive—12, FIPS PUB 201, and the Office of Management and Budget Memorandum M–05–24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

*The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696) are applicable to this solicitation.

*Paperwork Reduction Act*

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, SF LLL, CD–346, SF 424 Research and Related Family, SF 424 Short Organizational Family, SF 424 Individual Form family has been approved by the Office of Management and Budget (OMB) under the respective

control numbers 4040–0004, 0348–0044, 0348–0040, 0348–0046, 0605–0001, 4040–0001, 4040–0003, and 4040–0005.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

*Executive Order 12866*

This notice has been determined to be not significant for purposes of Executive Order 12866.

*Executive Order 13132 (Federalism)*

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

*Administrative Procedure Act/Regulatory Flexibility Act*

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: April 9, 2010.

**Terry Bevels,**

*Acting Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

[FR Doc. 2010–8545 Filed 4–13–10; 8:45 am]

**BILLING CODE 3510–PJ–P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**RIN 0648–XV76**

**Endangered Species; File No. 14754**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Isaac Virgin, PhD, New York University School of Medicine, Department of Environmental Medicine, Tuxedo, NY 10987, has been issued a permit to take shortnose sturgeon (*Acipenser*



*brevirostrum*) for purposes of scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

- Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713-2289; fax (301) 713-0376; and
- Northeast Region, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930; phone (978) 281-9328; fax (978) 281-9394.

**FOR FURTHER INFORMATION CONTACT:** Malcolm Mohead or Jennifer Skidmore, (301) 713-2289.

**SUPPLEMENTARY INFORMATION:** On February 8, 2010, notice was published in the **Federal Register** (75 FR 6184) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named organization. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

The applicant is authorized to conduct research on shortnose sturgeon to determine if early life-stages of shortnose sturgeon are sensitive to PCB and TCDD mixtures potentially affecting recruitment success in environments such as in the Hudson River. This permit allows the importation of up to 25,000 fertilized shortnose sturgeon eggs of Saint John River ancestry from Acadian Sturgeon and Caviar Inc., Saint John, NB, Canada. The initial proposed research will take place during two sampling seasons beginning in the spring of 2010 and ending in the spring of 2011. In subsequent years of the permit, as amended, studies would take place evaluating the toxic effects of other contaminants. The permit would not authorize any takes from the wild, nor would it authorize any release of captive sturgeon into the wild.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: April 7, 2010.

**Jolie Harrison,**

*Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2010-8549 Filed 4-13-10; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration [A-570-831]

#### **Fresh Garlic from the People's Republic of China: Extension of Time Limits for Final Results of the Antidumping Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* April 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Scott Lindsay or Thomas Gilgunn, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-0780 and (202) 482-4236, respectively.

#### **Background**

On December 24, 2008, the Department of Commerce (Department) published the initiation of an administrative review of fresh garlic from the People's Republic of China. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 73 FR 79055 (December 24, 2008). On December 8, 2009, the Department published the preliminary results of this antidumping duty administrative review. *See Fresh Garlic From the People's Republic of China: Preliminary Results of, and Intent To Rescind, in Part, the Antidumping Duty Administrative Review*, 74 FR 64677 (December 8, 2009) (*Preliminary Results*). The period of review for this administrative review is November 1, 2007 through October 31, 2008. The final results are currently due on April 14, 2010.

#### **Extension of Time Limits for Final Results**

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), provides that the Department will issue the final results in an administrative review of an antidumping duty order within 120 days after the date on which the preliminary results are published. However, the Department may extend

the deadline for completion of the final results of an administrative review to 180 days if it determines it is not practicable to complete the review within the foregoing time period. *See* section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

The Department determines that it is not practicable to complete the final results of this administrative review by the current deadline of April 14, 2010. Specifically, the Department requires additional time to analyze issues raised by interested parties. Thus, we are extending the time for completion of the final results of this administrative review by 30 days, as permitted by section 751(a)(3)(A) of the Act. The final results are now due no later than May 17, 2010.

This notice is published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 8, 2010.

**John M. Andersen,**

*Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2010-8561 Filed 4-13-10; 8:45 am]

**BILLING CODE 3510-DS-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-570-890]

#### **Wooden Bedroom Furniture From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**DATES:** *Effective Date:* April 14, 2010.

**SUMMARY:** On December 1, 2009, the Department of Commerce ("Department") initiated a sunset review of the antidumping duty order on wooden bedroom furniture from the People's Republic of China ("PRC"). On the basis of a notice of intent to participate and an adequate substantive response from domestic interested parties, as well as a lack of response from respondent interested parties, the Department conducted an expedited (120-day) sunset review. As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins likely to prevail if the order were revoked are included in the Final Results of Review section of this notice.



**FOR FURTHER INFORMATION CONTACT:** Rebecca Pandolph or Howard Smith, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; Telephone: (202) 482-3627 or (202) 482-5193, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 1, 2009, the Department published the notice of initiation of the sunset review of the antidumping duty order on wooden bedroom furniture from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). See *Initiation of Five-Year ("Sunset") Review*, 74 FR 62748 (December 1, 2009). On December 11, 2009, the Department received a notice of intent to participate from American Furniture Manufacturers Committee for Legal Trade (the "AFM Committee"); Vaughan-Bassett Furniture Company, Inc. ("Vaughan-Bassett"); Dubois Woods Products Inc. ("Dubois"); The Jasper Group d/b/a Klem Hospitality ("Klem"); Solid Comfort, Inc. ("Solid Comfort"); Cabinet Makers, Millmen and Industrial Carpenters Local 721 ("Local 721"); UBC Southern Council of Industrial Workers Local 2305 ("Local 2305"); and Teamsters, Chauffeurs, Warehousemen and Helpers Local 991 ("Local 991") within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The AFM Committee, which includes Vaughan-Bassett, claimed interested party status under section 771(9)(E) of the Act as a trade or business association a majority of whose members manufacture, produce or wholesale a domestic like product. Dubois, Klem and Solid Comfort claimed interested party status under section 771(9)(C) of the Act as producers of the domestic like product. Local 721, Local 2305, and Local 991 claimed interested party status under section 771(9)(D) of the Act as a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product.

On December 30, 2009, the Department received a substantive response from the AFM Committee, Vaughan-Bassett, Dubois, Klem, Solid Comfort, Local 721, Local 2305, and Local 991 within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. The Department did not receive a response from any respondent interested party to this proceeding. As a result, pursuant to

section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order.

**Scope of the Order**

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

*The subject merchandise includes the following items:* (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chiffoniers, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chest-on-chests,<sup>1</sup> highboys,<sup>2</sup> lowboys,<sup>3</sup> chests of drawers,<sup>4</sup> chests,<sup>5</sup> door chests,<sup>6</sup>

chiffoniers,<sup>7</sup> hutches,<sup>8</sup> and armoires;<sup>9</sup> (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

*The scope of the order excludes the following items:* (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;<sup>10</sup> (9) jewelry armories;<sup>11</sup> (10) cheval

<sup>7</sup> A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

<sup>8</sup> A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

<sup>9</sup> An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

<sup>10</sup> As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. See Customs' Headquarters' Ruling Letter 043859, dated May 17, 1976.

<sup>11</sup> Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 in width, 18 in depth, and 49 in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. See Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, Concerning Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China, dated August 31, 2004. See also *Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part*, 71 FR 38621 (July 7, 2006).

<sup>1</sup> A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

<sup>2</sup> A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

<sup>3</sup> A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

<sup>4</sup> A chest of drawers is typically a case containing drawers for storing clothing.

<sup>5</sup> A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

<sup>6</sup> A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

mirrors;<sup>12</sup> (11) certain metal parts;<sup>13</sup> (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds<sup>14</sup> and (14) toy boxes.<sup>15</sup>

Imports of subject merchandise are classified under subheading 9403.50.9040 of the HTSUS as “wooden \* \* \* beds” and under subheading 9403.50.9080 of the HTSUS as “other \* \* \* wooden furniture of a kind used in the bedroom.” In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9040 of the HTSUS as “parts of wood” and framed glass mirrors may also be entered under subheading 7009.92.5000 of the HTSUS as “glass mirrors \* \* \*

framed.” This order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

#### Analysis of Comments Received

All issues raised in this review are addressed in the “Issues and Decision Memorandum” (“Decision Memorandum”) from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, which is dated concurrently with this notice, and hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping

and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 1117 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the web at <http://ia.ita.doc.gov/frn>. The paper copy and electronic version of the Decision Memorandum are identical in content.

#### Final Results of Review

Pursuant to section 752(c) of the Act, we determine that revocation of the antidumping duty order on wooden bedroom furniture from the PRC would be likely to lead to continuation or recurrence of dumping at the following weighted-average percentage margins:

Exporter/manufacturer	Margin (percent)
Dongguan Lung Dong Furniture Co., Ltd., or Dongguan Dong He Furniture Co., Ltd. ....	2.32
Rui Feng Woodwork Co., Ltd., or Rui Feng Lumber Development Co., Ltd. or Dorbest Limited .....	7.87
Lacquer Craft Mfg. Co., Ltd .....	(1)
Markor International Furniture (Tianjin) Manufacturing Company, Ltd. ....	0.83
Shing Mark Enterprise Co., Ltd., or Carven Industries Limited (BVI), or Carven I Industries Limited (HK), or Dongguan Zhenxin Furniture Co., Ltd., or Dongguan Yongpeng Furniture Co., Ltd .....	4.96
Starcorp Furniture (Shanghai) Co., Ltd., or Orin Furniture (Shanghai) Co., Ltd., or Shanghai Starcorp Furniture Co., Ltd .....	15.78
Alexandre International Corp., or Southern Art Development Ltd., or Alexandre Furniture (Shenzhen) Co., Ltd., or Southern Art Furniture Factory .....	7.24
Art Heritage International, Ltd., or Super Art Furniture Co., Ltd., or Artwork Metal & Plastic Co., Ltd., or Jibson Industries Ltd., or Always Loyal International .....	7.24
Billy Wood Industrial (Dong Guan) Co., Ltd., or Great Union Industrial (Dongguan) Co., Ltd., or Time Faith Ltd .....	7.24
Changshu HTC Import & Export Co., Ltd .....	7.24
Cheng Meng Furniture (PTE) Ltd., or China Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd .....	7.24
Chuan Fa Furniture Factory .....	7.24
Classic Furniture Global Co., Ltd .....	7.24
Clearwise Co., Ltd .....	7.24
COE Ltd .....	7.24
Dalian Guangming Furniture Co., Ltd .....	7.24
Dalian Huafeng Furniture Co., Ltd .....	7.24
Decca Furniture Limited .....	7.24
Dongguan Cambridge Furniture Co., or Glory Oceanic Co., Ltd .....	7.24
Dongguan Chunsan Wood Products Co., Ltd., or Trendex Industries Ltd .....	7.24

<sup>12</sup> Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, i.e., a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. See *Wooden Bedroom Furniture from the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 948 (January 9, 2007).

<sup>13</sup> Metal furniture parts and unfinished furniture parts made of wood products (as defined above)

that are not otherwise specifically named in this scope (i.e., wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under the Harmonized Tariff Schedule of the United States (“HTSUS”) subheading 9403.90.7000.

<sup>14</sup> Upholstered beds that are completely upholstered, i.e., containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. See *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 72 FR 7013 (February 14, 2007).

<sup>15</sup> To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches

to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (“ASTM”) standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. See *Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination To Revoke Order in Part*, 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum “Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,” dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

Exporter/manufacturer	Margin (percent)
Dongguan Creation Furniture Co., Ltd., or Creation Industries Co., Ltd .....	7.24
Dongguan Grand Style Furniture, or Hong Kong Da Zhi Furniture Co., Ltd .....	7.24
Dongguan Great Reputation Furniture Co., Ltd .....	7.24
Dongguan Hero Way Woodwork Co., Ltd., or Dongguan Da Zhong Woodwork Co., Ltd., or Hero Way Enterprises Ltd., or Well Earth International Ltd. ....	7.24
Dongguan Hung Sheng Artware Products Co., Ltd., or Coronal Enterprise Co., Ltd. ....	7.24
Dongguan Kin Feng Furniture Co., Ltd .....	7.24
Dongguan Kingstone Furniture Co., Ltd., or Kingstone Furniture Co., Ltd .....	7.24
Dongguan Liaobushangdun Huada Furniture Factory, or Great Rich (HK) Enterprise Co. Ltd .....	7.24
Dongguan Qingxi Xinyi Craft Furniture Factory (Joyce Art Factory) .....	7.24
Dongguan Singways Furniture Co., Ltd .....	7.24
Dongguan Sunrise Furniture Co., or Taicang Sunrise Wood Industry Co., Ltd., or Shanghai Sunrise Furniture Co., Ltd., or Fairmont Designs .....	7.24
Dongying Huanghekou Furniture Industry Co., Ltd .....	7.24
Dream Rooms Furniture (Shanghai) Co., Ltd .....	7.24
Eurosa (Kunshan) Co., Ltd., or Eurosa Furniture Co., (PTE) Ltd .....	7.24
Ever Spring Furniture Co. Ltd., or S.Y.C. Family Enterprise Co., Ltd .....	7.24
Fine Furniture (Shanghai) Ltd .....	7.24
Foshan Guanqiu Furniture Co., Ltd .....	7.24
Fujian Lianfu Forestry Co., Ltd., or Fujian Wonder Pacific Inc .....	7.24
Gaomi Yatai Wooden Ware Co., Ltd., or Team Prospect International Ltd., or Money Gain International Co .....	7.24
Garri Furniture (Dong Guan) Co., Ltd., or Molabile International, Inc., or Weei Geo Enterprise Co., Ltd .....	7.24
Green River Wood (Dongguan) Ltd .....	7.24
Guangming Group Wumahe Furniture Co., Ltd .....	7.24
Guangzhou Maria Yee Furnishings Ltd., Pyla HK, Ltd., and Maria Yee, Inc .....	7.24
Hainan Jong Bao Lumber Co., Ltd., or Jibbon Enterprise Co., Ltd .....	7.24
Hamilton & Spill Ltd .....	7.24
Hang Hai Woodcraft's Art Factory .....	7.24
Hualing Furniture (China) Co., Ltd., or Tony House Manufacture (China) Co., Ltd., or Buysell Investments Ltd., or Tony House Industries Co., Ltd .....	7.24
Jardine Enterprise, Ltd .....	7.24
Jiangmen Kinwai Furniture Decoration Co., Ltd .....	7.24
Jiangmen Kinwai International Furniture Co., Ltd .....	7.24
Jiangsu Weifu Group Fullhouse Furniture Manufacturing. Corp. ....	7.24
Jiangsu Yuexing Furniture Group Co., Ltd .....	7.24
Jiedong Lehouse Furniture Co., Ltd .....	7.24
King's Way Furniture Industries Co., Ltd., or Kingsyear Ltd .....	7.24
Kuan Lin Furniture (Dong Guan) Co., Ltd., or Kuan Lin Furniture Factory, or Kuan Lin Furniture Co., Ltd .....	7.24
Kunshan Lee Wood Product Co., Ltd .....	7.24
Kunshan Summit Furniture Co., Ltd .....	7.24
Langfang Tiancheng Furniture Co., Ltd .....	7.24
Leeфу Wood (Dongguan) Co., Ltd., or King Rich International, Ltd .....	7.24
Link Silver Ltd. (V.I.B.), or Forward Win Enterprises Co. Ltd., or Dongguan Haoshun Furniture Ltd .....	7.24
Locke Furniture Factory, or Kai Chan Furniture Co., Ltd., or Kai Chan (Hong Kong) Enterprise Ltd., or Taiwan Kai Chan Co., Ltd .....	7.24
Longrange Furniture Co., Ltd .....	7.24
Nanhai Baiyi Woodwork Co., Ltd .....	7.24
Nanhai Jiantai Woodwork Co., Ltd., or Fortune Glory Industrial Ltd. (H.K. Ltd) .....	7.24
Nantong Dongfang Orient Furniture Co., Ltd .....	7.24
Nantong Yushi Furniture Co., Ltd .....	7.24
Nathan International Ltd., or Nathan Rattan Factory .....	7.24
Orient International Holding Shanghai Foreign Trade Co., Ltd .....	7.24
Passwell Corporation, or Pleasant Wave Ltd .....	7.24
Perfect Line Furniture Co., Ltd .....	7.24
Prime Wood International Co., Ltd., or Prime Best International Co., Ltd., or Prime Best Factory, or Liang Huang (Jiaxing) Enterprise Co., Ltd .....	7.24
PuTian JingGong Furniture Co., Ltd .....	7.24
Qingdao Liangmu Co., Ltd .....	7.24
Restonic (Dongguan) Furniture Ltd., or Restonic Far East (Samoa) Ltd .....	7.24
RiZhao SanMu Woodworking Co., Ltd .....	7.24
Season Furniture Manufacturing Co., or Season Industrial Development Co .....	7.24
Sen Yeong International Co., Ltd., or Sheh Hau International Trading Ltd .....	7.24
Shanghai Jian Pu Export & Import Co., Ltd .....	7.24
Shanghai Maoji Imp and Exp Co., Ltd .....	7.24
Sheng Jing Wood Products (Beijing) Co., Ltd., or Telstar Enterprises Ltd .....	7.24
Shenyang Shining Dongxing Furniture Co., Ltd .....	7.24
Shenzhen Forest Furniture Co., Ltd .....	7.24
Shenzhen Jiafa High Grade Furniture Co., Ltd., or Golden Lion International Trading Ltd .....	7.24
Shenzhen New Fudu Furniture Co., Ltd .....	7.24
Shenzhen Wonderful Furniture Co., Ltd .....	7.24
Shenzhen Xiande Furniture Factory .....	7.24
Shenzhen Xingli Furniture Co., Ltd .....	7.24
Shun Feng Furniture Co., Ltd .....	7.24

Exporter/manufacturer	Margin (percent)
Songgang Jasonwood Furniture Factory, or Jasonwood Industrial Co., Ltd. S.A. ....	7.24
Starwood Furniture Manufacturing Co. Ltd. ....	7.24
Starwood Industries Ltd. ....	7.24
Strongson Furniture (Shenzhen) Co., Ltd., or Strongson Furniture Co., Ltd., or Strongson (HK) Co. ....	7.24
Sunforce Furniture (Hui-Yang) Co., Ltd., or Sun Fung Wooden Factory, or Sun Fung Co., or Shin Feng Furniture Co., Ltd., or Stupendous International Co., Ltd. ....	7.24
Superwood Co., Ltd., or Lianjiang Zongyu Art Products Co., Ltd. ....	7.24
Tarzan Furniture Industries Ltd., or Samsco Industries Ltd. ....	7.24
Teamway Furniture (Dong Guan) Ltd., or Brittomart Inc. ....	7.24
Techniwood Industries Ltd., or Ningbo Furniture Industries Limited, or Ningbo Hengrun Furniture Co., Ltd. ....	7.24
Tianjin Fortune Furniture Co., Ltd. ....	7.24
Tianjin Master Home Furniture ....	7.24
Tianjin Phu Shing Woodwork Enterprise Co., Ltd. ....	7.24
Tianjin Sande Fairwood Furniture Co., Ltd. ....	7.24
Tube-Smith Enterprise (ZhangZhou) Co., Ltd., or Tube-Smith Enterprise (Haimen) Co., Ltd., or Billonworth Enterprises Ltd. ....	7.24
Union Friend International Trade Co., Ltd. ....	7.24
U-Rich Furniture (Zhangzhou) Co., Ltd., or U-Rich Furniture Ltd. ....	7.24
Wanhengtong Nueevder (Furniture) Manufacture Co., Ltd., or Dongguan Wanengtong Industry Co., Ltd. ....	7.24
Woodworth Wooden Industries (Dong Guan) Co., Ltd. ....	7.24
Xiamen Yongquan Sci-Tech Development Co., Ltd. ....	7.24
Jiangsu XiangSheng Bedtime Furniture Co., Ltd. ....	7.24
Xingli Arts & Crafts Factory of Yangchun. ....	7.24
Yangchun Hengli Co. Ltd. ....	7.24
Yeh Brothers World Trade, Inc. ....	7.24
Yichun Guangming Furniture Co., Ltd. ....	7.24
Yida Co., Ltd., or Yitai Worldwide, Ltd., or Yili Co., Ltd., or Yetbuild Co., Ltd. ....	7.24
Yihua Timber Industry Co., Ltd. ....	7.24
Zhang Zhou Sanlong Wood Product Co., Ltd. ....	7.24
Zhangjiagang Zheng Yan Decoration Co., Ltd. ....	7.24
Zhangjiagang Daye Hotel Furniture Co., Ltd. ....	7.24
Zhangzhou Guohui Industrial & Trade Co. Ltd. ....	7.24
Zhanjiang Sunwin Arts & Crafts Co., Ltd. ....	7.24
Zhong Shan Fullwin Furniture Co., Ltd. ....	7.24
Zhongshan Fookyik Furniture Co., Ltd. ....	7.24
Zhongshan Golden King Furniture Industrial Co., Ltd. ....	7.24
Zhoushan For-Strong Wood Co., Ltd. ....	7.24
PRC-Wide Rate. ....	198.08

<sup>1</sup> Excluded.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: April 7, 2010.

**Ronald K. Lorentzen,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 2010-8565 Filed 4-13-10; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

#### Foreign-Trade Zone 126—Reno, NV; Site Renumbering Notice

Foreign-Trade Zone 126 was approved by the Foreign-Trade Zones Board on April 4, 1986 (Board Order 328, 51 FR 12904, 4/16/86), and expanded on February 25, 1997 (Board Order 872, 62 FR 10520, 3/7/97), on December 15, 1999 (Board Order 1066, 64 FR 72642, 12/28/99), and on March 12, 2007 (Board Order 1506, 72 FR 13080, 3/20/2007).

FTZ 126 currently consists of 13 "Sites" totaling some 1,296 acres in the Reno, Nevada area. The current update does not alter either the physical boundaries or the time limits that have previously been approved, but instead involves an administrative renumbering of the existing sites 1, 3 and 6 to separate unrelated, non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 126 will be as follows: *Site 1* (13.9 acres)—located at 728 Spice Island

Drive, Sparks; *Site 2* (9 acres)—located at 450-475 Lillard Drive, Sparks; *Site 3* (26 acres)—3 parcels located at 205 Parr Boulevard (10 acres), 365 Parr Circle (9 acres), and 345 Parr Circle (7 acres); *Site 4* (200 acres, sunset 3/31/2012)—within the 5,000-acre Crossroads Commerce Center, Nevada Pacific Parkway and East Newlands Drive, Fernley (Lyon County); *Site 5* (20 acres, sunset 3/31/2012)—within the 110-acre Fernley Industrial Park, located at Lyon Drive and Industrial Drive, Fernley; *Site 6* (622 acres, 2 parcels, sunset 3/31/2012)—located at the Tahoe Reno Industrial Center southwest of Denmark and USA Parkway, Patrick (Storey County); *Site 7* (38 acres, 2 parcels, sunset 3/31/2012)—at the Reno-Stead Airport located at 14551 Industry Circle (33 acres) and 4895 Texas Avenue (5 acres) in Reno (Washoe County); *Site 8* (53 acres, 4 parcels, sunset 3/31/2012)—Sage Point Business Park located on or near Lear Boulevard at Military Road, Reno; *Site 9* (25 acres, sunset 3/31/2012)—consists of three parcels within the Dermody Business Park located at 5360 Capital Court and 1312 and 1316

Capital Boulevard, Reno; *Site 10* (10 acres, 2 parcels, sunset 3/31/2012)—within the 180-acre Dermody Aircenter located at 4879 Aircenter Circle (3 acres) and 4750 Longley Lane (7 acres), Reno; *Site 11* (18 acres, sunset 3/31/2012)—located at 45 Vista Boulevard, Sparks; *Site 12* (100 acres, 6 parcels, sunset 3/31/2012)—South Meadows Business Park located at 1150, 1160, 1170, 1175, 1190 and 1195 Trademark Drive, Reno; *Site 13* (10 acres, sunset 3/31/2012)—within the Reno-Tahoe International Airport, 700 South Rock Boulevard, Reno; *Site 14* (0.4 acres)—located at 1095 Spice Island Drive, Sparks; *Site 15* (0.7 acres)—located at 1415 Greg Street, Sparks; *Site 16* (4 acres)—800 Stillwell Road, Reno; and, *Site 17* (146 acres, 5 parcels, sunset 3/31/2012)—at Patrick Business Park located on Waltham Way, Patrick (Storey County).

For further information, contact Christopher Kemp at [Christopher.Kemp@trade.gov](mailto:Christopher.Kemp@trade.gov) or (202) 482-0862.

Dated: April 7, 2010.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2010-8553 Filed 4-13-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**RIN 0648-XV75**

#### Atlantic Highly Migratory Species; Meeting of the Atlantic Highly Migratory Species Advisory Panel

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS will hold a 3-day Atlantic Highly Migratory Species (HMS) Advisory Panel (AP) meeting in May 2010. The intent of the meeting is to consider options for the conservation and management of Atlantic HMS. The meeting is open to the public.

**DATES:** The AP meeting will be held from 1 p.m. to 6 p.m. on Tuesday, May 11, 2010; from 8:30 a.m. to 5:30 p.m. on Wednesday, May 12, 2010; and from 8:30 a.m. to 3 p.m. on Thursday, May 13, 2010.

**ADDRESSES:** The meeting will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Brian Parker or Margo Schulze-Haugen at 301-713-2347.

**SUPPLEMENTARY INFORMATION:** The Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104 297, provided for the establishment of an AP to assist in the collection and evaluation of information relevant to the development of any Fishery Management Plan (FMP) or FMP amendment for HMS. NMFS consults with and considers the comments and views of AP members when preparing and implementing FMPs or FMP amendments for Atlantic tunas, swordfish, billfish, and sharks.

The AP has previously consulted with NMFS on Amendment 1 to the Billfish FMP (April 1999), the HMS FMP (April 1999), Amendment 1 to the HMS FMP (December 2003), the Consolidated HMS FMP (October 2006), and Amendments 1, 2, and 3 to the Consolidated HMS FMP (April and October 2008, and February and September 2009). At the May 2010 AP meeting, NMFS plans to discuss the management measures in Amendment 3 to the 2006 Consolidated HMS FMP for small coastal, shortfin mako, and smoothhound sharks, and conduct working group sessions regarding Atlantic bluefin tuna, sharks, and swordfish buoy gear fishery management. Other potential items for discussion include billfish and vessel monitoring system issues. An introductory session for new AP members will be held at 10:30 a.m. on May 11, 2010.

#### Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Brian Parker at (301) 713-2347, at least 7 days prior to the meeting.

Dated: April 9, 2010.

**Emily H. Menashes,**  
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2010-8551 Filed 4-13-10; 8:45 am]

**BILLING CODE 3510-22-S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A-351-828]**

#### Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil: Preliminary Results of Antidumping Duty Administrative Review and Extension of Time Limit for the Final Results

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests by interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled flat-rolled carbon quality steel products (hot-rolled steel) from Brazil. The review covers Usinas Siderurgicas de Minas Gerais (USIMINAS) and its subsidiary Companhia Siderurgica Paulista (COSIPA) (hereafter referred to as USIMINAS/COSIPA). The period of review (POR) is March 1, 2008, through February 28, 2009.

We preliminarily determine that the sale of hot-rolled steel from Brazil has been made below normal value (NV) by USIMINAS/COSIPA during the POR. If these preliminary results are adopted in our final results of administrative review, we will issue appropriate assessment instructions to U.S. Customs and Border Protection (CBP). Interested parties are invited to comment on these preliminary results. See "Preliminary Results of Review," below. The Department intends to issue the final results no later than 180 days from the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act). See "Extension of the Time Limits for the Final Results" below.

**DATES:** *Effective Date:* April 14, 2010.

**FOR FURTHER INFORMATION CONTACT:** Patrick Edwards or Dena Crossland, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7850, Washington, DC 20230; telephone: (202) 482-8029 or (202) 482-3362, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On March 12, 2002, the Department published the antidumping duty order on hot-rolled steel from Brazil. See *Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil*, 67 FR 11093 (March 12, 2002) (*Antidumping Order*).

On March 2, 2009, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of this order. See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 9077 (March 2, 2009). In response, on March 31, 2009, USIMINAS/COSIPA requested that the Department conduct an administrative review of their sales of subject merchandise for the period March 1, 2008, through February 28, 2009.

On April 27, 2009, the Department initiated an administrative review of USIMINAS/COSIPA. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 5821 (April 27, 2009) (*Initiation Notice*).

On April 28, 2009, United States Steel Corporation (petitioner) submitted a letter of appearance. On April 30, 2009, and May 1, 2009, respectively, domestic interested parties Nucor Corporation and ArcelorMittal USA Inc. also submitted letters of appearance.

On May 8, 2009, the Department issued sections A, B, and C of the antidumping questionnaire to respondents USIMINAS/COSIPA. On June 9, 2009, USIMINAS/COSIPA filed their response to section A of the Department's questionnaire (AQR), and on June 29, 2009, USIMINAS/COSIPA filed their responses to sections B and C of the Department's questionnaire (BCQR).

On June 17, 2009, the Department issued section D (Cost of Production/Constructed Value) of the Department's antidumping duty questionnaire to respondents, to which USIMINAS/COSIPA responded on July 30, 2009 (DQR).

On August 18, 2009, petitioner submitted factual information regarding USIMINAS/COSIPA for the Department to consider prior to issuing supplemental questionnaires to respondents.

On September 1, 2009, the Department issued its first sections A through C supplemental questionnaire to USIMINAS/COSIPA, and on September 11, 2009, the Department issued its first section D supplemental questionnaire to USIMINAS/COSIPA. On September 23, 2009, USIMINAS/COSIPA responded to the Department's first sections A through C supplemental questionnaire (SQR), and on October 7, 2009, USIMINAS/COSIPA responded to

the Department's first section D supplemental questionnaire (DSQR).<sup>1</sup>

On November 18, 2009, the Department issued its second sections A through C supplemental questionnaire to USIMINAS/COSIPA, to which USIMINAS/COSIPA responded on December 17, 2009 (SSQR).

On December 1, 2009, the Department fully extended the deadline for the preliminary results of this review from December 1, 2009, to March 31, 2010. See *Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil; Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 62744 (December 1, 2009).

On December 18, 2009, the Department issued a second section D supplemental questionnaire, to which USIMINAS/COSIPA responded on January 7, 2010 (DSSQR).

On January 4, 2010, the Department issued its third sections A through C supplemental questionnaire, to which USIMINAS/COSIPA responded on January 13, 2010 (TSQR).

#### Tolling of Deadlines

As explained in the memorandum from the Deputy Assistant Secretary (DAS) for Import Administration, the Department exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding were extended by seven days. See Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010. Therefore, the deadline for the preliminary results of this review became April 7, 2010.

#### Period of Review

The POR covered by this review is March 1, 2008, through February 28, 2009.

#### Scope of the Order

For purposes of this order, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not

painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this order.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this order, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

- 1.80 percent of manganese, or
- 1.50 percent of silicon, or
- 1.00 percent of copper, or
- 0.50 percent of aluminum, or
- 1.25 percent of chromium, or
- 0.30 percent of cobalt, or
- 0.40 percent of lead, or
- 1.25 percent of nickel, or
- 0.30 percent of tungsten, or
- 0.012 percent of boron, or
- 0.10 percent of molybdenum, or
- 0.10 percent of niobium, or
- 0.41 percent of titanium, or
- 0.15 percent of vanadium, or
- 0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this order unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this order:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above

<sup>1</sup> On October 9, 2009, USIMINAS/COSIPA submitted an English translation of the audited financial statements for one of their affiliated comparison market customers, Dufer, S.A. USIMINAS/COSIPA inadvertently omitted this translation from their October 7, 2009, section D supplemental questionnaire response.

(including, *e.g.*, ASTM specifications A543, A387, A514, A517, and A506).

- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.

- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.

- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C Cu	Mn Ni	P	S	Si	Cr
0.10–0.14% .....	0.90% Max .....	0.025% Max .....	0.005% Max .....	0.30–0.50% .....	0.50–.70%
0.20–0.40% .....	0.20% Max.				

Width = 44.80 inches maximum; Thickness = 0.063–0.198 inches; Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000–88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C Cu	Mn Ni	P Mo	S	Si	Cr
0.10–0.16% .....	0.70–0.90% .....	0.025% Max .....	0.006% Max .....	0.30–0.50% .....	0.50–0.70%
0.25% Max .....	0.20% Max .....	0.21% Max .....			

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C Cu	Mn Ni	P V(wt.)	S Cb	Si	Cr
0.10–0.14% .....	1.30–1.80% .....	0.025% Max .....	0.005% Max .....	0.30–0.50% .....	0.50–0.70%
0.20–0.40% .....	0.20% Max .....	0.10 Max .....	0.08% Max.		

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum; Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C Cu	Mn Ni	P Nb	S Ca	Si Al	Cr
0.15% Max .....	1.40% Max .....	0.025% Max .....	0.010% Max .....	0.50% Max .....	1.00% Max
0.50% Max .....	0.20% Max .....	0.005% Min .....	Treated .....	0.01–0.07%.	

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses > 0.148 inches; Tensile Strength = 80,000 psi minimum.

- Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm<sup>2</sup> and 640 N/mm<sup>2</sup> and an elongation percentage 26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm<sup>2</sup> and 690 N/mm<sup>2</sup> and an elongation percentage 25 percent for thicknesses of 2 mm and above.

- Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an

inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows:

- 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

—Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin

passed, with a minimum copper content of 0.20%.

The merchandise subject to this order is classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60,

7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this order, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.01.80.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under this order is dispositive.

#### Verification

As provided in section 782(i) of the Act, and 19 CFR 351.222(f)(2)(ii), we conducted cost and sales verifications of the questionnaire responses of USIMINAS/COSIPA on March 1–5, 2010, and March 8–12, 2010, respectively. We used standard verification procedures for each verification. The Department's cost and sales verification results will be outlined in forthcoming memoranda. Due to subsequent rescheduling of the verifications caused by the inclement weather, as noted in the "Tolling of Deadlines" section above, the verifications were conducted late in this proceeding and, as such, there was insufficient time to issue the verification reports prior to these preliminary results. Upon their issuance after these preliminary results, interested parties may comment on these memoranda in their case briefs, *see* "Disclosure and Public Comment" section below.

#### Affiliated Respondents

Under section 771(33)(E) of the Act, if one party owns, directly or indirectly, five percent or more of the other, such parties are considered to be affiliated for purposes of the antidumping law. Furthermore, it is the Department's practice to collapse affiliated producers for purposes of calculating a margin when they have production facilities for similar or identical products that would not require substantial retooling in order to restructure manufacturing priorities and the facts demonstrate that there is

significant potential for manipulation of pricing or production. In the final determination of the investigation of hot-rolled steel from Brazil, the Department determined that USIMINAS and COSIPA were affiliated parties, and collapsed these entities. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38756, 38759 (July 19, 1999).

In response to our questions concerning this issue, USIMINAS/COSIPA have indicated that during the POR, COSIPA was wholly owned by USIMINAS, and post-POR COSIPA was legally dissolved and absorbed into USIMINAS. Moreover, USIMINAS/COSIPA have indicated that the Department should follow its prior determination on this issue. We preliminarily determine that there are no new facts on the record to indicate that the parties are unaffiliated, nor that the Department's basis for collapsing these entities has changed. Therefore, we have preliminarily determined to collapse these entities for purposes of this review. For a more detailed discussion of our collapsing analysis, *see* Memorandum to the File, through Angelica Mendoza, Program Manager, from Patrick Edwards and Dena Crossland, Analysts, titled "Analysis of Data Submitted by Usinas Siderurgicas de Minas Gerais and Companhia Siderurgica Paulista for the Preliminary Results of the Antidumping Duty Administrative Review of Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil (A–351–828)," dated April 7, 2010 (Preliminary Analysis Memo).

#### Fair Value Comparisons

To determine whether sales of subject merchandise were made in the United States at less than fair value, we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we compared the EP of sales within the POR to the monthly weighted-average normal value of the foreign like product where there were sales made in the ordinary course of trade, as discussed in the "Cost of Production" section below.

#### Product Comparisons

In accordance with section 771(16) of the Act, we considered all sales of hot-rolled steel covered by the description in the "Scope of the Order" section of this notice, *supra*, which were sold in the comparison market (*i.e.*, Brazil) during the POR to be the foreign like

product for the purpose of determining appropriate product comparisons to hot-rolled steel sold in the United States. For our discussion of home market viability, *see* the "Normal Value" section of this notice, *infra*. We matched products based on the physical characteristics reported by USIMINAS/COSIPA in response to the Department's antidumping questionnaire. The Department has relied on eleven characteristics to match the U.S. sales of the subject merchandise to comparison market sales of the foreign like product according to product hierarchy: paint, quality, carbon content, yield strength, thickness, width, form, tempering, pickling, edge trim, and whether or not with patterns in relief. The Department compared prime merchandise to prime merchandise, consistent with our practice. Since there were sales of identical merchandise in the comparison market in the same month as the date of the U.S. sale, we did not have to compare the U.S. sale to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's antidumping questionnaire.

#### Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as EP or the constructed export price (CEP). The NV LOT is based on the starting price of the sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. *See also* 19 CFR 351.412(c)(1)(iii). For CEP, it is the level of the constructed sale from the exporter to an affiliated importer after the deductions required under section 772(d) of the Act. *See* 19 CFR 351.412(c)(1)(ii). For EP, it is the starting price, which is usually from exporter to importer. *See* 19 CFR 351.412(c)(1)(i). In this review, USIMINAS/COSIPA claimed its sale to the United States was an EP sale.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make an LOT adjustment under section



773(a)(7)(A) of the Act and 19 CFR 351.412. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from USIMINAS/COSIPA regarding the marketing stages involved in making their reported comparison market and U.S. sales to unaffiliated customers. USIMINAS/COSIPA provided a description of all selling activities performed, along with a table comparing the LOTs among each channel of distribution and customer category for both markets. *See* SQR at Exhibit S-10.

For the U.S. market, USIMINAS/COSIPA reported one LOT, with one channel of distribution, for its EP sale. *See* AQR at A-16. USIMINAS/COSIPA stated that the U.S. sale was made to an unaffiliated trading company. *Id.* at A-19. Based on our analysis of USIMINAS/COSIPA's selling functions for its sale to the United States, we determine that there was one LOT, *i.e.*, the EP LOT (LOTU1), for its U.S. sale.

For the comparison market, USIMINAS/COSIPA reported two LOTs, comprised of two channels of distribution: (1) Direct mill sales to unaffiliated and affiliated distributors and OEM customers, and (2) indirect sales made through affiliated resellers to unaffiliated customers (*i.e.*, the downstream sales channel). USIMINAS/COSIPA further reported that the downstream sales through its affiliated resellers were made at a distinct LOT, resulting in two LOTs in the comparison market. We reviewed the level at which USIMINAS/COSIPA performed each of the claimed selling functions with respect to each claimed channel of distribution. For USIMINAS/COSIPA's sales made through the downstream sales channel, we consider the relevant functions to be the selling functions of both the producer and the reseller (*i.e.*, the cumulative selling functions along the chain of distribution). Based on our analysis, we determined USIMINAS/COSIPA's comparison market sales were made at two distinct LOTs: mill direct sales from USIMINAS/COSIPA to distributors and OEM customers (LOTH1), and the downstream sales channel from USIMINAS/COSIPA through their affiliated resellers to unaffiliated customers (LOTH2). For further discussion, *see* the "Level of Trade" section in the Preliminary Analysis Memo.

As USIMINAS/COSIPA's U.S. sales were made at one LOT (LOTU1), we conducted an analysis of whether LOTU1 was comparable to that of LOTH1 and/or LOTH2. USIMINAS/

COSIPA stated that the U.S. sale was made at the same LOT as its comparison market direct mill sales (LOTH1). Based on our analysis of record evidence, we find that the U.S. sale is at the same LOT as USIMINAS/COSIPA's comparison market direct mill sales (*i.e.*, LOTH1). We further preliminarily find that the degree of selling activities provided by USIMINAS/COSIPA and their affiliated resellers in the comparison market when selling to unaffiliated customers are at a more advanced and frequent degree than those services provided by USIMINAS/COSIPA in LOTH1. For further discussion, *see* the "Level of Trade" section in the Preliminary Analysis Memo. Therefore, we matched the EP sale to sales at the same LOT in the comparison market, which is LOTH1, and did not make a LOT adjustment. *See* section 773(a)(7)(A) of the Act. A complete and detailed explanation of our level of trade analysis can be found in the "Level of Trade" section of the Preliminary Analysis Memo.

#### Date of Sale

19 CFR 351.401(i) states that the Department normally will use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale, but may use a date other than the date of invoice if it better reflects the date on which the material terms of sale are established. The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10.

With respect to USIMINAS/COSIPA's U.S. sale, USIMINAS/COSIPA reported the amended contract date as the date of sale for its U.S. sale. *See* AQR at A-31 and BCQR at C-15. For purposes of this review, we examined whether invoice date or another date better represents the date on which the material terms of sale were established. The Department examined sales documentation, including contracts and invoices, provided by USIMINAS/COSIPA for its U.S. sales and found that the material terms of sale were set on the amended contract date and did not change from the amended contract to the invoice. Therefore, we preliminarily determine that amended contract date is the

appropriate date of sale for the U.S. sales in this administrative review because it better represents the date upon which the material terms were established. *See* Preliminary Analysis Memo for a further discussion of this issue.

With respect to USIMINAS/COSIPA's comparison market sales, shipment date occurs on the same date as the nota fiscal (or invoice) date. Furthermore, based on record evidence, all material terms of sale are subject to change up until the date of the nota fiscal. *See* BCQR at U-20 and C-20; *see also*, AQR at 30-31 and exhibit A-7. Therefore, for USIMINAS/COSIPA's comparison market sales, we have preliminarily used the nota fiscal date as the date of sale. *See* Preliminary Analysis Memo for a further discussion of this issue.

#### Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c)." Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter," as adjusted under sections 772(c) and (d). USIMINAS/COSIPA have classified their U.S. sale as an EP sale because it was made before the date of importation directly to an unaffiliated purchaser in the U.S. market. For purposes of these preliminary results, we accepted this classification and calculated EP in accordance with section 772(a) of the Act because the merchandise was sold prior to importation by the exporter or producer outside the United States to the first unaffiliated purchaser in the United States and because CEP was not otherwise warranted. *See* AQR at A-32 and Exhibit A-6. We calculated EP based on cost-plus-freight (CFR), packed and delivered prices charged to the first unaffiliated U.S. customer. We used the amended contract date as the date of sale.<sup>2</sup> We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act,

<sup>2</sup> *See* Preliminary Analysis Memo for a further discussion of this issue.

including foreign inland freight from the plant to the port of exportation, brokerage and handling expenses incurred in the comparison market, and international freight.

### Normal Value

#### A. Home Market Viability

To determine whether there was a sufficient volume of sales of hot-rolled steel in the home market to serve as a viable basis for calculating normal value, we compared the volume of respondents' home market sales of the foreign like product to the volume of their U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Pursuant to section 773(a)(1)(B) of the Act, because respondents' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of their U.S. sales of the subject merchandise, we have preliminarily determined that the home market was viable for comparison purposes.

#### B. Arm's-Length Test

USIMINAS/COSIPA reported that they made sales in the comparison market to affiliated and unaffiliated customers. Those affiliated customers included affiliated resellers as well as affiliated OEM customers who consumed the subject merchandise. Because the volume of these affiliated party sales were greater than five percent of USIMINAS/COSIPA's home market sales, USIMINAS/COSIPA also reported the downstream sales from their affiliated resellers to the first unaffiliated customers, which we used in our analysis and calculation of normal value.

Where prices to an affiliated party are, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise sold to unaffiliated parties at the same LOT, we determine that the sales made to the affiliated party are at arm's-length and we use these sales in our analysis. *See Antidumping Proceedings—Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002). Where sales made to affiliated customers in the comparison market are not made at arm's-length, we exclude them from our analysis. *See* 19 CFR 351.403(c). To test whether these sales were made at arm's-length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, taxes, movement charges, imputed credit, direct selling expenses, and packing expenses. Here, we determined that

there were sales to affiliated OEM customers that were not made at arm's-length. *See* Preliminary Analysis Memo for a further discussion of this issue.

#### C. Cost of Production Analysis

In previous segments of this proceeding, the Department disregarded sales made by USIMINAS/COSIPA that were found to be below their cost of production (COP). *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 8299 (February 19, 1999); *see also Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products From Brazil: Preliminary Results of Antidumping Duty Administrative Review of the Suspension Agreement*, 66 FR 41500 (August 8, 2001). Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that respondents made sales of the foreign like product in the comparison market at prices below the COP within the meaning of section 773(b) of the Act, as below cost sales made by USIMINAS were disregarded in the most recently completed review. Accordingly, on June 17, 2009, the Department requested that USIMINAS/COSIPA respond to Section D (Cost of Production/Constructed Value) of the Department's antidumping duty questionnaire.

We calculated the COP on a product-specific basis, based on the sum of the respondents' costs of materials and fabrication for the foreign like product plus amounts for general and administrative (G&A) expenses, interest expenses, and the costs of all expenses incidental to preparing the foreign like product for shipment in accordance with section 773(b)(3) of the Act. After analyzing USIMINAS and COSIPA's record evidence, we found that USIMINAS and COSIPA did not experience significant changes in the total cost of manufacturing (COM) during the POR to warrant a departure from our standard annual costing approach. Therefore, we calculated USIMINAS/COSIPA's COP using an annual weighted-average cost for the POR rather than using an alternative cost methodology.

We relied on the COP information provided by USIMINAS/COSIPA except for the following adjustments:

1. We recalculated the cost of COSIPA's control number (CONNUM) sold in the U.S. market to include world-wide production.
2. We recalculated USIMINAS/COSIPA's G&A expenses by dividing the G&A expenses by their respective cost of goods sold. In addition, we adjusted

USIMINAS' G&A expense ratio to exclude revenues and expenses related to the sale of investments.

3. We adjusted the consolidated financial expense ratio of USIMINAS/COSIPA to disallow the interest income from long-term deposits.

For further details regarding these adjustments, *see* Memorandum to Neal M. Halper, Director, Office of Accounting, through Michael P. Martin, Lead Accountant, from Laurens van Houten, Senior Accountant, titled "Cost of Production and Constructed Value Adjustments for the Preliminary Results—Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA)," dated April 7, 2010, which is on file in the Central Records Unit (CRU) in room 1117 of the main Commerce Department building.

On a product-specific basis, we compared the adjusted weighted-average COP figures for the POR to the comparison market sales of the foreign like product, as required under section 773(b) of the Act, to determine whether these sales were made at prices below the COP. The prices were exclusive of any applicable movement charges, packing expenses, warranties, and indirect selling expenses. In determining whether to disregard comparison market sales made at prices below their COP and in accordance with sections 773(b)(2)(B), (C), and (D) of the Act, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time.

We found that, for certain products, more than 20 percent of respondents' comparison market sales were at prices below the COP and these below-cost sales were made within an extended period of time in substantial quantities. In addition, these sales were made at prices that did not permit the recovery of costs within a reasonable period of time. Therefore, we disregarded these sales and used the remaining sales of the same product as the basis for determining normal value in accordance with section 773(b)(1) of the Act.

#### D. Price-to-Price Comparisons

We based NV on comparison market prices to unaffiliated parties that passed the cost tests. We adjusted gross unit price for billing adjustments and taxes. We made adjustments, where applicable, for inland freight, warehousing, and inland insurance, in accordance with section 773(a)(6)(B) of the Act. Where appropriate, we made circumstance-of-sale adjustments for

imputed credit, warranties, interest revenue, and commissions pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. For more information, see Preliminary Analysis Memo. Next, we matched the U.S. sales to NV sales.

### Currency Conversions

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. See *Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from France*, 68 FR 47049, 47055 (August 7, 2003), unchanged in *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 68 FR 69379 (December 12, 2003). However, the Federal Reserve Bank does not track or publish exchange rates for the Brazilian Real. Therefore, pursuant to section 773A of the Act, we made currency conversions from Brazilian reais to U.S. dollars based on the daily exchange rates from Factiva, a Dow Jones & Reuters Retrieval Service. Factiva publishes exchange rates for Monday through Friday only. We used the rate of exchange on the most recent Friday for conversion dates involving Saturday through Sunday where necessary.

### Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period March 1, 2008, through February 28, 2009:

Manufacturer/Exporter	Weighted-Average Margin (percent)
Usinas Siderurgicas de Minas Gerais (USIMINAS)/ Companhia Siderurgica Paulista (COSIPA) .....	4.93

### Disclosure and Public Comments

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). As stated in the "Verification" section above, the Department will release the cost and sales verification memoranda to parties for comment after the publication of these preliminary results in the **Federal Register**. Therefore, interested parties may submit case briefs to the Department no later than seven days after the date of the issuance of the last verification report in this

proceeding. See 19 CFR 351.309(c)(1)(ii). Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs. See 19 CFR 351.309(d)(1) and (2). Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities. Executive summaries should be limited to five pages total, including footnotes. Further, parties submitting case briefs, rebuttal briefs, and written comments should provide the Department with an additional copy of the public version of any such argument on diskette.

In accordance with section 774 of the Act, the Department will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this review, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and in a room to be determined. Parties should confirm by telephone, the date, time, and location of the hearing 48 hours before the scheduled date. Interested parties who wish to request a hearing, or to participate in a hearing if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

See 19 CFR 351.310(c). At the hearing, oral presentations will be limited to issues raised in the briefs.

### Extension of the Time Limit for the Final Results

Section 751(a)(3)(A) of the Act requires that the Department issue the final results of an administrative review within 120 days after the date on which the preliminary results are published. If it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the deadline for the final results to a maximum of 180 days after the date on which the preliminary results are published.

In this proceeding, the Department requires additional time to complete the final results of this administrative review. As noted above, because the

Department had to reschedule its sales verification due to inclement weather and the late scheduling of the cost verification, the verification reports will not be issued until after these preliminary results. Upon issuance of the verification reports, it may be necessary for the Department to request revised sales and cost databases pursuant to the findings during the cost and/or sales verifications. In order to ensure that interested parties have sufficient time to analyze the reports and comment on these preliminary results, as well as any new information that may be received after these preliminary results, it is not practicable to complete this administrative review within the original time limit. Consequently, the Department is extending the time limit for completion of the final results of this review by 60 days, in accordance with section 751(a)(3)(A) of the Act. The final results are now due no later 180 days after the publication date of these preliminary results.

### Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), because entered values were reported for all sales examined, we calculated importer-specific, *ad valorem* assessment rates for these preliminary results of review. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each reported importer. We will instruct CBP to assess the importer-specific rate uniformly, as appropriate, on all entries of subject merchandise made by the relevant importer during the POR. See 19 CFR 351.212(b). Where the duty assessment rates are above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise by that importer in accordance with the requirements set forth in 19 CFR 351.106(c)(2). The Department intends to issue importer-specific assessment instructions to CBP 15 days after the date of publication of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such

instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

### Cash Deposit Requirements

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of hot-rolled steel from Brazil entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the companies covered by this review (*i.e.*, USIMINAS/COSIPA) will be the rate established in the final results of review; (2) for any previously-reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 42.12 percent, the all-others rate established in the LTFV investigation. *See Antidumping Duty Order*, 67 FR at 11094. These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 7, 2010.

**Ronald K. Lorentzen,**  
Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010-8558 Filed 4-13-10; 8:45 am]

BILLING CODE 3510-DS-P

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565-3472 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

Currently, the Corporation is soliciting comments concerning the Corporation Enrollment and Exit forms. Applicants will respond to the questions included in this ICR in order to enroll in the National Service Trust and document their exit from service.

Copies of the information collection request can be obtained by contacting the office listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by June 14, 2010.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) *By mail sent to:* Corporation for National and Community Service; Attention Amy Borgstrom, Associate Director for Policy, Room 9515; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) *By fax to:* (202) 606-3476, Attention Amy Borgstrom, Associate Director for Policy.

(4) *Electronically through the Corporation's e-mail address system:* [aborgstrom@cns.gov](mailto:aborgstrom@cns.gov).

**FOR FURTHER INFORMATION CONTACT:** Amy Borgstrom, (202) 606-6930, or by e-mail at [aborgstrom@cns.gov](mailto:aborgstrom@cns.gov).

### SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

### Background

The Corporation Enrollment form will be used by AmeriCorps members to enroll in the National Service Trust. The Corporation Exit Form will be used by AmeriCorps members and Learn and Serve America Summer of Service participants once they complete service to document completion of their term.

**Current Action:** The Corporation seeks to renew the current Corporation Member Enrollment and Exit Forms and add a new instrument for Learn and Serve America. The forms are identical to the current forms and will be used in the same manner. The Corporation also seeks to continue using the current forms until the revised forms are approved by OMB. The current forms are due to expire on July 31, 2010.

**Type of Review:** Renewal.

**Agency:** Corporation for National and Community Service.

**Title:** Corporation Enrollment and Exit Forms.

**OMB Number:** 3045-0006 (Enrollment) and 3045-0015 (Exit).

**Agency Number:** None.

**Affected Public:** AmeriCorps members and Summer of Service participants.

**Total Respondents:** 296,000.

**Frequency:** Ongoing.

**Average Time per Response:** 10 minutes

**Estimated Total Burden Hours:** 49,333 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 7, 2010.

**Lois Nembhard,**

*Acting Director, AmeriCorps State and National.*

[FR Doc. 2010-8562 Filed 4-13-10; 8:45 am]

**BILLING CODE 6050--\$S-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### Federal Advisory Committee; Department of Defense Wage Committee

**AGENCY:** Department of Defense (DoD).

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the provisions of section 10 of Public Law 92-463, the Federal Advisory Committee Act, notice is hereby given that closed meeting of the Department of Defense Wage Committee will be held on May 4, 2010.

**DATES:** The meeting will be held on Tuesday, May 4, 2010, at 10 a.m.

**ADDRESSES:** The meeting will be held at 1400 Key Boulevard, Level A, Room A101, Rosslyn, Virginia 22209.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301-4000.

**SUPPLEMENTARY INFORMATION:** Under the provisions of section 10(d) of Public Law 92-463, the Department of Defense has determined that the meeting meets the criteria to close it to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman (see **FOR FURTHER INFORMATION CONTACT**) concerning matters believed to be deserving of the Committee's attention.

Dated: April 9, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2010-8505 Filed 4-13-10; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Docket ID: DOD-2010-OS-0044]**

#### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Logistics Agency, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Logistics Agency proposes to alter a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on May 14, 2010 unless comments are received which result in a contrary determination.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

\* *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

\* *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

*Instructions:* All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is of make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Sinkler at (703) 767-5045.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Stop 16443, Fort Belvoir, VA 22060-6221.

The proposed system reports, as required by 5 U.S.C. 552a(r), of the Privacy Act of 1974, as amended, were submitted on March 31, 2010, to the

House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996; 61 FR 6427).

Dated: April 9, 2010.

**Mitchell S. Bryman,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S500.20**

#### SYSTEM NAME:

Defense Logistics Agency (DLA) Criminal Incident Reporting System Records (DCIRS) (June 8, 2009; 74 FR 27119)

#### CHANGES:

\* \* \* \* \*

#### SYSTEM LOCATION:

Add "and 6801 Telegraph Road, Alexandria, VA 22310-3398." to the end of the sentence in the first paragraph within the entry.

\* \* \* \* \*

#### CATEGORIES OF RECORDS IN THE SYSTEM:

Add "Reports of Inquiry, Reports of Initiatives," to the entry after "...Police Incident Reports,".

\* \* \* \* \*

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with "Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information, except to the extent that disclosure would reveal the identity of a confidential source. NOTE: When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 323. For additional information contact the system manager."

**S500.20****SYSTEM NAME:**

Defense Logistics Agency (DLA)  
Criminal Incident Reporting System  
Records (DCIRS).

**SYSTEM LOCATION:**

Enterprise Data Center East, 8180  
Green Meadows Drive, Lewis Center,  
OH 43035-9605 and 6801 Telegraph  
Road, Alexandria, VA 22310-3398.

Records may also be maintained  
within the DLA Offices that use these  
records in the performance of their  
official duties located at Headquarters,  
Defense Logistics Agency, 8725 John J.  
Kingman Road, Fort Belvoir, VA 22060-  
6221 and the DLA Primary Level Field  
Activities.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian and military personnel of  
DLA, contractor employees, and other  
persons who have committed or are  
suspected of having committed, any  
criminal act (felony or misdemeanor) or  
any violations of laws, regulations, or  
ethical standards on DLA controlled  
activities or facilities; or outside of those  
areas in cases where DLA is or may be  
a party of interest.

Individuals or companies who  
purchase or seek to purchase excess or  
surplus personal property from the  
Department of Defense (DoD) where that  
property is either U.S. Munitions List or  
Commerce Control List property.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's name, address and  
telephone number, Reports of  
Preliminary Inquiry, Criminal  
Information Reports, Reports of Referral,  
Reports of Investigation, Police Incident  
Reports, Reports of Inquiry, Reports of  
Initiatives, Trade Security Controls  
Assessment Records, Reports of Post  
Sale Investigation, Crime Vulnerability  
Assessments, Response to Leads,  
Reports of Outreach, Reports of  
Corrective Action, Commander or  
Director's Reports of Corrective Action,  
invoices, sales contracts, messages,  
statements of witnesses, subjects, and  
victims, photographs, laboratory reports,  
data collection reports, and other related  
papers by DLA Investigators, Security  
Officers, Federal, State, and local law  
enforcement and investigative agencies.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Omnibus Crime Control Act of  
1994; Section 21, Internal Security Act  
of 1950 (Pub. L. 831, 81st Congress);  
DoD Directive 5105.22, Defense  
Logistics Agency (32 CFR part 359); DoD  
Directive 5105.42, Defense Security  
Service (32 CFR part 361); DoD

Directive 7730.47, Defense Incident-  
Based Reporting System; DoD  
Instruction 2030.8, Trade Security  
Controls on DoD Excess and Surplus  
Personal Property; DoD Instruction  
5240.4, Reporting of Counterintelligence  
and Criminal Violations; DoD  
Instruction 5505.2, Criminal  
Investigations of Fraud Offenses; 28  
U.S.C. 534, Uniform Federal Crime  
Reporting Act; 18 U.S.C. 922, Brady  
Handgun Violence Prevention Act of  
1994; 42 U.S.C. 10601, Victim Rights  
and Restitution Act of 1990; 10 U.S.C.  
1562, Database on Domestic Violence  
Incidents and E.O. 9397 (SSN), as  
amended.

**PURPOSE(S):**

Information in this system is used by  
Investigations Division, DLA  
Accountability Office, and the DLA  
Office of General Counsel personnel to  
monitor progress of cases and to  
develop non-personal statistical data on  
crime and criminal investigative  
support for the future. DLA General  
Counsel also uses data to review cases,  
determine proper legal action, and  
coordinate on all available remedies.  
Information is released to DLA  
managers who use the information to  
determine actions required to correct  
the causes of loss and to take  
appropriate action against DLA  
employees or contractors in cases of  
their involvement. Records are also used  
by DLA to monitor the progress of  
investigations, identify crime conducive  
conditions, and prepare crime  
vulnerability assessments/statistics.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures  
generally permitted under 5 U.S.C.  
552a(b) of the Privacy Act of 1974, these  
records may specifically be disclosed  
outside the DoD as a routine use  
pursuant to 5 U.S.C. 552a(b)(3) as  
follows:

To Federal, State, and local agencies  
having jurisdiction over or investigative  
interest in the substance of the  
investigation, for corrective action,  
debarment, or reporting purposes.

To Government contractors  
employing individuals who are subjects  
of an investigation.

To DLA contractors or vendors when  
the investigation pertains to a person  
they employ or to a product or service  
they provide to DoD when disclosure is  
necessary to accomplish or support  
corrective action.

The DoD 'Blanket Routine Uses' apply  
to this system of records.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Records may be stored on paper  
records and/or on electronic storage  
media.

**RETRIEVABILITY:**

Hardcopy records filed  
chronologically by DLA case number  
and cross-indexed to individual or file  
name. Automated records are retrievable  
by name of the individual or firm, DLA  
case number, DLA Field Activity  
number or activity code, or keyword.

**SAFEGUARDS:**

Physical entry is restricted by the use  
of guards, locks, and administrative  
procedures. Computer terminals are  
password controlled with system-  
generated, forced password-change  
protocols or also equipped with "Smart  
Card" technology that requires the  
insertion of an embedded identification  
card and entry of a personal  
identification number (PIN). In addition,  
computer screens lock after a preset  
period of inactivity with re-entry  
controlled by passwording. DCIRS is  
also password controlled. Access to the  
database is limited to those DLA  
personnel who require the records in  
the performance of their official duties.  
Employees are periodically briefed on  
their responsibilities regarding privacy  
information. All individuals granted  
access to DCIRS is to have taken  
Information Assurance and Privacy Act  
training. Records and computerized files  
are maintained in areas accessible only  
to the DLA OI, DLA Offices of Public  
Safety, and the DLA General Counsel  
personnel.

**RETENTION AND DISPOSAL:**

Disposition pending. Until the  
National Archives and Records  
Administration has approved the  
retention and disposal of these records,  
treat records as permanent.

**SYSTEM MANAGER(S) AND ADDRESS:**

Staff Director, Investigations Division,  
DLA Accountability Office,  
Headquarters, Defense Logistics Agency,  
8725 John J. Kingman Road, Stop 2358,  
Fort Belvoir, VA 22060-6221.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine  
whether information about themselves  
is contained in this system of records  
should address written inquiries to the  
Privacy Act Office, Headquarters,  
Defense Logistics Agency, ATTN: DGA,  
8725 John J. Kingman Road, Suite 1644,  
Fort Belvoir, VA 22060-6221.

Individual must provide full name, current address and telephone numbers.

#### RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

Individual must provide full name, current address and telephone numbers.

#### CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060-6221.

#### RECORD SOURCE CATEGORIES:

Reports of Preliminary Inquiry, Criminal Information Reports, Reports of Referral, Reports of Investigation, Police Incident Reports, Reports of Inquiry, Reports of Initiatives, Trade Security Controls Assessment Records, Reports of Post Sale Investigation, Crime Vulnerability Assessments, Response to Leads, Reports of Outreach, Reports of Corrective Action, Commander or Director's Reports of Corrective Action, invoices, sales contracts, messages, statements of witnesses, subjects, and victims, photographs, laboratory reports, data collection reports, and other related papers, by DLA Investigators, Security Officers, Federal, State, and local law enforcement and investigative agencies.

#### EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes, other than material within the scope of subsection 5 U.S.C. 552a(j)(2), may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of the information, the individual will be provided access to the information, except to the extent that disclosure would reveal the identity of a confidential source. **Note:** When claimed, this exemption allows limited protection of investigative reports maintained in a system of records used in personnel or administrative actions.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1),

(2), and (3)(c) and (e) and is published at 32 CFR part 323. For more information contact the system manager.

[FR Doc. 2010-8506 Filed 4-13-10; 8:45 am]

BILLING CODE 5001-06-P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Portsmouth

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Thursday, May 6, 2010 6 p.m.

**ADDRESSES:** Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

**FOR FURTHER INFORMATION CONTACT:** Joel Bradburne, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897-3822, [Joel.Bradburne@lex.doe.gov](mailto:Joel.Bradburne@lex.doe.gov).

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE-EM and site management in the areas of environmental restoration, waste management and related activities.

#### Tentative Agenda

- Call to Order, Introductions, Review of Agenda
- Approval of March Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaisons' Comments
- Administrative Issues:
  - Subcommittee Updates
- Public Comments
- Final Comments
- Adjourn

Breaks taken as appropriate.

**Public Participation:** The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Joel Bradburne at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either

before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Joel Bradburne at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

**Minutes:** Minutes will be available by writing or calling Joel Bradburne at the address and phone number listed above. Minutes will also be available at the following Web site: <http://www.portsab.org/publicmeetings.html>.

Issued at Washington, DC, on April 6, 2010.

**Rachel Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 2010-8495 Filed 4-13-10; 8:45 am]

BILLING CODE 6450-01-P

## DEPARTMENT OF ENERGY

### U.S. Energy Information Administration

#### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** U.S. Energy Information Administration (EIA), Department of Energy (DOE).

**ACTION:** Agency Information Collection Activities: Proposed Collection; Comment Request.

**SUMMARY:** The EIA is soliciting comments on the proposed three-year extension to the Form EIA-886, "Annual Survey of Alternative Fueled Vehicles."

**DATES:** Comments must be filed by June 14, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

**ADDRESSES:** Send comments to Cynthia Amezcua. To ensure receipt of the comments by the due date, submission by FAX (202-287-1964) or e-mail ([cynthia.amezcua@eia.doe.gov](mailto:cynthia.amezcua@eia.doe.gov)) is recommended. The mailing address is Office of Coal, Nuclear, Electric and Alternate Fuels, EI-52, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Ms. Amezcua may be contacted by telephone at 202-586-1658.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or



copies of any forms and instructions should be directed to Cynthia Amezcua at the address listed above. Also see the proposed form and instructions at [http://www.eia.doe.gov/cneaf/alternate/page/fed\\_register/alt\\_fuels\\_2011.html](http://www.eia.doe.gov/cneaf/alternate/page/fed_register/alt_fuels_2011.html).

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

#### I. Background

The Federal Energy Administration Act of 1974 (15 U.S.C. 761 *et seq.*) and the DOE Organization Act (42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands and to promote sound policymaking, efficient markets, and public understanding of energy and its interaction with the economy and the environment.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Also, the EIA will later seek approval for this collection by the Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

Form EIA-886, "Annual Survey of Alternative Fueled Vehicles" is an annual survey that collects information on: (1) The number and type of alternative fueled vehicles (AFVs) and advanced technology vehicles that vehicle suppliers made available in the previous calendar year and plan to make available in the following calendar year; (2) The number, type and geographic distribution of AFVs in use in the previous calendar year; (3) the amount and distribution of each type of alternative transportation fuel (ATF) consumed in the previous calendar year; (4) the miles traveled by AFVs; and (5) the number, type, and disposition of retired AFVs in the previous calendar year. The EIA-886 data are collected from suppliers and users of AFVs. The objective of the EIA-886 survey are to: (1) Comply with section 503 of the Energy Policy Act of 1992 (EPACT) that requires the EIA to collect information and provide estimates related to

alternative fueled vehicles, alternate transportation fuels, and replacement fuels; (2) Satisfy public requests for information on AFVs and ATFs; (3) Provide Congress with a measure of the extent to which the objectives of EPACT are being achieved; and (4) Provide EIA with a basis for estimating and forecasting total AFV and ATF use in the U.S. The results of the EIA-886 are released annually on EIA's Web site at <http://www.eia.doe.gov/fuelrenewable.html>.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

#### II. Current Actions

EIA will be requesting a three-year extension of approval to its Annual Survey of Alternative Fueled Vehicles. EIA proposes to revise the data requested in Section 2, Question 4 regarding vehicle retirements. The proposal is to simplify the reporting of vehicle disposition by collapsing four data fields into the following two categories on vehicle disposition: (1) Number of Vehicles Retired from AFV service, scrapped, or converted to traditional fuel and (2) Number of Vehicles sold or transferred to another entity for use as an AFV. This simplified reporting format will enable EIA to analyze AFV retirements more efficiently and report the number of AFV vehicles in use with greater accuracy.

#### III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

##### *As a Potential Respondent to the Request for Information*

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

C. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

D. Can the information be submitted by the due date?

E. Public reporting burden for this collection is estimated to average 4.4 hours per response. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

F. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

G. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

H. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

##### *As a Potential User of the Information To Be Collected*

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility?

B. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

C. Is the information useful at the levels of detail to be collected?

D. For what purpose(s) would the information be used? Be specific.

E. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

**Statutory Authority:** Section 13(b) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, codified at 15 U.S.C. 772(b).

Issued in Washington, DC, April 8, 2010.

**Stephanie Brown,**

*Director, Statistic and Methods Group, U.S. Energy Information Administration.*

[FR Doc. 2010-8497 Filed 4-13-10; 8:45 am]

**BILLING CODE 6450-01-P**



**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OAR-2010-0328; FRL-9137-3]

**Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Request for Control of Evaporative Emissions From New and In-Use Portable Gasoline Containers (Renewal), EPA ICR 2213.02, OMB Control No. 2060-0597****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on June 30, 2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before June 14, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2010-0328, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- **Fax:** 202-566-9744.
- **Mail:** Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mailcode 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- **Hand Delivery:** Docket Center, (EPA/DC), EPA, West Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OAR-2010-0328. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise

protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:**

David Good, Compliance and Innovative Strategies Division, Office of Transportation and Air Quality, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734-214-4450; fax number: 734-214-4869; e-mail address: [good.david@epa.gov](mailto:good.david@epa.gov).

**SUPPLEMENTARY INFORMATION:****How Can I Access the Docket and/or Submit Comments?**

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OAR-2010-0328, which is available for online viewing at <http://www.regulations.gov>, or in person viewing at the Air Docket in the Docket Center (EPA/DC), EPA West, EPA Headquarters Library, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Air Docket is 202-566-1742.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in

the docket ID number identified in this document.

**What Information Is EPA Particularly Interested in?**

*Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:*

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

**What Should I Consider When I Prepare My Comments for EPA?**

*You may find the following suggestions helpful for preparing your comments:*

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**What Information Collection Activity or ICR Does This Apply to?**

Docket ID No. EPA-HQ-OAR-2010-0328

*Affected entities:* Entities potentially affected by this action are manufacturers of portable fuel containers.

*Title:* Control of Evaporative Emissions from New and In-Use Portable Gasoline Containers (Renewal).

*ICR numbers:* EPA ICR No. 2213.03, OMB Control No. 2060-0597.

*ICR status:* This ICR is currently scheduled to expire on June 30, 2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

*Abstract:* EPA is required under Section 183(e) of the Clean Air Act to regulate Volatile Organic Compound (VOC) emissions from the use of consumer and commercial products. Under regulations promulgated on February 26, 2007 (72 FR 8428) manufacturers of new portable gasoline containers are required to obtain certificates of conformity with the Clean Air Act, effective January 1, 2009. This ICR covers the burdens associated with this certification process. EPA reviews information submitted in the application for certification to determine if the container design conforms to applicable requirements and to verify that the required testing has been performed. The certificate holder is required to keep records on the testing and collect and keep warranty and defect information for annual reporting on in-use performance of their products. The respondent must also retain records on the units produced, apply serial numbers to individual containers, and track the serial numbers to their certificates of conformity. Any information submitted for which a claim of confidentiality is made is safeguarded according to EPA regulations at 40 CFR 2.201 *et seq.*

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 63.8 hours for an average of two responses per year. Burden means the total time, effort, or

financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:*

*Estimated total number of potential respondents:* 10.

*Frequency of response:* Yearly.

*Estimated total average number of responses for each respondent:* 2.

*Estimated total annual burden hours:* 638

*Estimated total annual costs:* \$25,206. This includes an estimated labor burden cost of \$24,687 and an estimated cost of \$519 for capital investment or maintenance and operational costs.

**What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 8, 2010.

**Lori Stewart,**

*Acting Director, Office of Transportation and Air Quality.*

[FR Doc. 2010-8519 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OECA-2009-0531; FRL-9137-5]

**Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Halogenated Solvent Cleaners (Renewal), EPA ICR Number 1652.07, OMB Control Number 2060-0273**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

**DATES:** Additional comments may be submitted on or before May 14, 2010.

**ADDRESSES:** Submit your comments, referencing docket ID number EPA-HQ-OECA-2009-0531 to (1) EPA online using <http://www.regulations.gov> (our preferred method), or by e-mail to [docket.oeca@epa.gov](mailto:docket.oeca@epa.gov), or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 28221T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Robert C. Marshall, Jr., Office of Compliance, Mail Code: 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-7021; fax number: (202) 564-0050; e-mail address: [marshall.robert@epa.gov](mailto:marshall.robert@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 30, 2009 (74 FR 38006), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number

EPA-HQ-OECA-2009-0531, which is available for public viewing online at <http://www.regulations.gov>, in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1752.

Use EPA's electronic docket and comment system at <http://www.regulations.gov>, to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select "docket search," then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at <http://www.regulations.gov>, as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to <http://www.regulations.gov>.

**Title:** NESHAP for Halogenated Solvent Cleaners (Renewal).

**ICR Numbers:** EPA ICR Number 1652.07, OMB Control Number 2060-0273.

**ICR Status:** This ICR is scheduled to expire on June 30, 2010. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

**Abstract:** The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Halogenated Solvent Cleaning was promulgated on December 2, 1994 (59 FR 61805), and amended to

the final standards published June 5, 1995 (60 FR 29485), and December 11, 1998 (63 FR 68400). Owners or operators of the affected facilities must make an initial notification, performance tests, periodic reports, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports, at a minimum, are required semiannually.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 14 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

**Respondents/Affected Entities:** Halogenated solvent cleaners.

**Estimated Number of Respondents:** 1,431.

**Frequency of Response:** Initially, occasionally, quarterly, semiannually and annually.

**Estimated Total Annual Hour Burden:** 41,035.

**Estimated Total Annual Cost:** \$4,992,917, which includes \$3,977,917 in labor costs, no capital/startup costs, and \$1,015,000 in operation and maintenance (O&M) costs.

**Changes in the Estimates:** There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the respondents is very low, negative or non-existent. Therefore, the labor hours in the previous ICR reflect the current burden to the respondents and are reiterated in this ICR.

There is an increase in both Respondent and Agency costs resulting from labor rate increases from 2003 to 2009. This ICR uses 2009 labor rates

because burden and cost calculations in Tables 1 and 2 of this ICR were expanded to include managerial and clerical labor rates, and the previous ICR only provided a technical labor rate for 2003. Therefore, this ICR is updated to present the most recent available labor rates for each of the three labor categories.

Dated: April 8, 2010.

**John Moses,**

*Director, Collection Strategies Division.*

[FR Doc. 2010-8520 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2010-0291; FRL-9137-6]

**Agency Information Collection Activities: Proposed Collection; Comment Request; State Review Framework; EPA ICR Number 2185.04; OBM Control No. 2020-0031**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on April 30, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before June 14, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2010-0291, by one of the following methods:

- <http://www.regulations.gov>: (our preferred method) Follow the on-line instructions for submitting comments.
- *E-mail:* [gilbertson.sue@epa.gov](mailto:gilbertson.sue@epa.gov).
- *Fax:* 202-564-0027.
- *Mail:* Enforcement and Compliance Docket, Environmental Protection Agency, Mailcode: 2201T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B 3334, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Reading Room is (202) 566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1752. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OECA-2010-0291. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**FOR FURTHER INFORMATION CONTACT:** Susan Gilbertson, Office of Enforcement and Compliance Assurance, Office of Compliance, MC: 2221A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-566-2351; fax number: 202-564-0027; e-mail address: [gilbertson.sue@epa.gov](mailto:gilbertson.sue@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

#### **How Can I Access the Docket and/or Submit Comments?**

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OECA-2010-0291, which is

available for online viewing at <http://www.regulations.gov>, or in person viewing at the Enforcement and Compliance Docket Information Center in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566-1752.

Use <http://www.regulations.gov> to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

#### **What Information Is EPA Particularly Interested in?**

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (ii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iii) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### **What Should I Consider When I Prepare My Comments for EPA?**

You may find the following suggestions helpful for preparing your comments:

- 1. Explain your views as clearly as possible and provide specific examples.
- 2. Describe any assumptions that you used.
- 3. Provide copies of any technical information and/or data you used that support your views.
- 4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
- 5. Offer alternative ways to improve the collection activity.
- 6. Make sure to submit your comments by the deadline identified under DATES.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### **What Information Collection Activity or ICR Does This Apply to?**

Docket ID No. EPA-HQ-OECA-2010-0291.

**Affected entities:** Entities potentially affected by this action are 10 EPA Regional Offices, 50 States, 4 Territories, and 40 Local Agencies that implement the Clean Air Act, Clean Water Act, and the Resource Conservation and Recovery Act.

**Title:** State Review Framework.

**ICR numbers:** EPA ICR No. 2185.04, OMB Control No. 2020-0031.

**ICR status:** This ICR is currently scheduled to expire on April 30, 2011. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

**Abstract:** The State Review Framework ("Framework") is an oversight tool designed to assess state performance in enforcement and compliance assurance. The Framework's goal is to evaluate state performance by examining existing data to provide a consistent level of oversight and develop a uniform mechanism by which EPA Regions, working collaboratively with their states, can ensure that state environmental agencies are consistently implementing the national compliance and enforcement program in order to meet agreed-upon goals. Furthermore, the Framework is designed to foster dialogue on enforcement and compliance performance between the states that will enhance relationships and increase feedback, which will in turn lead to consistent program management and improved environmental results. The Framework is described in the April 26, 2005 **Federal Register** Notice (79 FR 21408) [<http://edocket.access.gpo.gov/2005/pdf/05-8320.pdf>]. This amendment will allow OECA to collect information from enforcement and compliance files reviewed during routine on-site visits of

state or local agency offices that will assist in the evaluation of the State Review Framework implementation from FY 2011 to the end of FY 2013. This request will allow EPA to make inquiries to assess the State Review Framework process, including the consistency achieved among the EPA Regions and states, the resources required to conduct the reviews, and the overall effectiveness of the program.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

**Burden Statement:** The annual public reporting and recordkeeping burden for this collection of information is estimated to average 376.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:*

*Estimated total number of potential respondents: 54.*

*Frequency of response: Once every four years.*

*Estimated total average number of responses for each respondent: one.*

*Estimated total annual burden hours: 11,016 hours.*

*Estimated total annual costs: \$393,342.84. This includes an estimated burden cost of \$0 for capital investment or maintenance and operational costs.*

#### **Are There Changes in the Estimates From the Last Approval?**

There is an increase of 5,894 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's recent experience with administering the SRF program, and its work with the states to improve the value and utilization of the

elements and metrics by which state environmental programs are measured. Based upon revised estimates, the annual public reporting and recordkeeping burden for the collection of information under the SRF program has increased from 384 to 612 hours. Additional numbers for these estimates are still being collected and confirmed, so these estimates may change in the final ICR.

#### **What Is the Next Step in the Process for This ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 7, 2010.

**Lisa Lund,**

*Office Director, Office of Compliance, Office of Enforcement & Compliance Assurance.*

[FR Doc. 2010-8523 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-P**

#### **ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OPA-2007-0042, FRL-9137-4]**

**Agency Information Collection Activities; Proposed Collection; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plans (Renewal); EPA ICR No. 1664.07, OMB Control No. 2050-0141**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on 8/31/2010. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before June 14, 2010.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OPA-2007-0042, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* [superfund.docket@epa.gov](mailto:superfund.docket@epa.gov).

- *Fax:* (202) 566-9744.

- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Superfund Docket, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- *Hand Delivery:* EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Pennsylvania Ave., NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. EPA-HQ-OPA-2007-0042. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/dockets/>.

**FOR FURTHER INFORMATION CONTACT:** William "Nick" Nichols, Office of

Emergency Management, (5104A), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202-564-1970; fax number: 202-564-2625; e-mail address: [Nichols.nick@epa.gov](mailto:Nichols.nick@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQ-OPA-2007-0042, which is available for online viewing at [www.regulations.gov](http://www.regulations.gov), or in person viewing at the Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Superfund Docket is 202-566-0276. Use [www.regulations.gov](http://www.regulations.gov) to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

#### What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork

burden for very small businesses affected by this collection.

#### What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under DATES.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

#### What Information Collection Activity or ICR Does This Apply to?

*Affected entities:* Entities potentially affected by this action include, but are not limited to, manufacturers of bioremediation agents, dispersants, surface collecting agents, surface washing agents and other chemical agents and biological additives used as countermeasures against oil spills. Affected private industries can be expected to fall within the following industrial classifications:

- Manufacturers of industrial inorganic chemicals (SIC 281/NAICS 325188),
- Manufacturers of industrial organic chemicals (SIC 286/NAICS 325199), and
- Manufacturers of miscellaneous chemical products (SIC 289/NAICS 325998).

*Title:* National Oil and Hazardous Substances Pollution Contingency Plans (Renewal)

*ICR numbers:* EPA ICR No. 1664.07 OMB Control No. 2050-0141.

*ICR status:* This ICR is currently scheduled to expire on 8/31/2010. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on

the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

#### Abstract:

Section 311(d)(2)(G) of the Clean Water Act (CWA), requires a Product Schedule (the Schedule), identifying "dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out" the National Contingency Plan (NCP). The authority of the President to implement the CWA is currently delegated to EPA by Executive Order 12777 (56 FR 54757, October 18, 1991). The use of dispersants, other chemical agents, and biological additives to respond to oil spills in U.S. waters is governed by Subpart J of the NCP (40 CFR 300.900).

To place a product on the Schedule, Subpart J requires that a product manufacturer conduct specific toxicity and effectiveness tests and submit the corresponding technical product data and other required information to the EPA Product Schedule Manager in the Office of Emergency Management (OEM). EPA has established an effectiveness threshold for listing dispersants (40 CFR 300.920(a)(2)). Only those dispersants that meet or exceed the established threshold will be listed on the Schedule. In addition, at 40 CFR 300.915(d), EPA requires respondents to test bioremediation agents for effectiveness, using the testing protocol contained in Appendix C to part 300. The Bioremediation Agent Effectiveness Test is used to compare the effectiveness of different bioremediation agents. The objective of the effectiveness testing protocol is to provide empirical laboratory evidence that evaluates a bioremediation agent's ability to enhance biodegradation compared to the degradation due to the natural population of oil degrading microbes.

Collection and submission to EPA of the toxicity and effectiveness tests and technical product data is mandatory if a manufacturer wants to place a product on the Schedule. All information is typically submitted on paper however, once a company contacts EPA, the Product Schedule Manager can allow some data and information to be submitted electronically. At 40 CFR 300.920(c), respondents may assert that certain information in the technical product data submissions is confidential business information. EPA will handle such claims pursuant to the provisions in 40 CFR Part 2, Subpart B. Such information must be submitted separately from non-confidential information, clearly identified, and

clearly marked "Confidential Business Information." If the applicant fails to make such a claim at the time of submittal, EPA may make the information available to the public without further notice.

#### Practical Utility/Users of the Data

EPA places eligible oil spill mitigating agents on the Schedule if all the required data are submitted. The Schedule is available for use by On-Scene Coordinators (OSC), Regional Response Teams, and Area Committees in determining the most appropriate products to use or prohibit in various spill scenarios. Under 40 CFR 300.910(a), RRTs and Area Committees are required to address the desirability of using the products on the Schedule in their Regional Contingency Plans (RCPs) and Area Contingency Plans (ACPs), respectively. The information collected from the product manufacturer is needed so that OSCs, RRTs, and Area Committees can make informed decisions to safely employ chemical/biological countermeasures to control oil discharges. Correct product use is critical in emergency situations. Subpart J ensures that OSCs, RRTs, and Area Committees have necessary data regarding the toxicity, effectiveness, and other characteristics of different products.

#### Burden Statement:

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 57 to 122 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

- *Estimated total number of potential respondents:* 14 per year.
- *Frequency of response:* On occasion.

- *Estimated total average number of responses for each respondent:* 1 response for each respondent.

- *Estimated total annual burden hours:* 390 hours.

- *Estimated total annual costs:* \$100,092, this includes an estimated burden cost of \$17,292 and an estimated cost of \$82,800 for capital investment or maintenance and operational costs.

#### Are There Changes in the Estimates From the Last Approval?

There is no change of hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. EPA anticipates the same number of annual burden hours or capital and O&M costs under this ICR renewal. The only modifications made to figures in this ICR supporting statement involve updates to the wage rates associated with respondent and EPA personnel activities. Labor costs are not reported in the OMB inventory.

#### What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: April 7, 2010.

**Dana S. Tulis,**

*Acting Director, Office of Emergency Management.*

[FR Doc. 2010-8522 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-P**

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2010-0264; FRL-8820-8]

#### Pesticide Experimental Use Permit; Receipt of Application; Comment Request

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's receipt of an application 74234-EUP-E from Intralytix, Inc., requesting an experimental use permit (EUP) for the *E. coli* 0157:H7 bacteriophage. The Agency

has determined that the permit may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

**DATES:** Comments must be received on or before May 14, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2010-0264, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2010-0264. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid



the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** SanYvette Williams, Antimicrobials Division (7510P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7702; e-mail address: [williams.sanyvette@epa.gov](mailto:williams.sanyvette@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

3. **Environmental justice.** EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

##### II. What Action is the Agency Taking?

Under Section 5 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), 7 U.S.C. 136c, EPA can allow manufacturers to field test pesticides under development. Manufacturers are required to obtain an EUP before testing new pesticides or new uses of pesticides if they conduct

experimental field tests on 10 acres or more of land or one acre or more of water.

Pursuant to 40 CFR 172.11(a), the Agency has determined that the following EUP application may be of regional and national significance, and therefore is seeking public comment on the EUP application:

**Submitter:** Intralytix, Inc. (74234-EUP-E).

**Pesticide Chemical:** *E. coli* 0157:H7 Bacteriophage.

**Summary of Request:** An EUP will enable Intralytix to determine if the efficacy of *E. coli* 0157:H7 bacteriophage ECP 100 in reducing or eliminating *E. coli* 0157:H7 contamination of surfaces in controlled laboratory experiments can be replicated under field conditions in a working beef processing plant environment.

A copy of the application and any information submitted is available for public review in the docket established for this EUP application as described under **ADDRESSES**.

Following the review of the application and any comments and data received in response to this solicitation, EPA will decide whether to issue or deny the EUP request, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

##### List of Subjects

Environmental protection,  
Experimental use permits.

Dated: April 2, 2010.

**Joan Harrigan-Farrelly,**  
Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 2010-8525 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-S**

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2010-0023; FRL-8808-5]

##### Pesticide Product; Registration Application

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received an application to register a pesticide product containing an active ingredient not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on this application.



**DATES:** Comments must be received on or before May 14, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2010-0023, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.
- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket ID number EPA-HQ-OPP-2010-0023. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index available

at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 308-8715; e-mail address: [mendelsohn.mike@epa.gov](mailto:mendelsohn.mike@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. General Information

###### A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

###### B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through

[www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).
- ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- iv. Describe any assumptions and provide any technical information and/or data that you used.
- v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- vi. Provide specific examples to illustrate your concerns and suggest alternatives.
- vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- viii. Make sure to submit your comments by the comment period deadline identified.

##### II. Registration Applications

EPA has received an application to register a pesticide product containing an active ingredient not included in any previously registered pesticide products. Pursuant to the provisions of section 3(c)(4) of FIFRA, EPA is hereby providing notice of receipt and opportunity to comment on this application. Notice of receipt of this application does not imply a decision by the Agency on the application.

**File Symbol:** 524-LOU. **Applicant:** Monsanto Company, 1300 I St., NW., Suite 450 East, Washington, DC 20005. **Product name:** MON 87701. **Active ingredient:** Plant-incorporated protectant, *Bacillus thuringiensis* Cry1Ac Protein and the Genetic Material

(Vector PV-GMIR9) Necessary for its Production in MON 87701 Soybean (OECD Unique Identifier MON-87701-2 at  $\leq 0.00047\%$ . *Proposed classification/Use*: None.

#### List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 6, 2010.

**W. Michael McDavit,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 2010-8484 Filed 4-13-10; 8:45 a.m.]

**BILLING CODE 6560-50-S**

#### ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2010-0246; FRL-8820-9]

#### **Cydia Pomonella Granulovirus; Product Cancellation Order for a Pesticide Registration**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces EPA's cancellation order of a product containing the pesticide, *Cydia pomonella* granulovirus, pursuant to section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. This cancellation order follows the December 31, 2009, expiration of a conditional, time-limited registration. This is not the last *Cydia pomonella* granulovirus product registered for use in the United States. Any distribution, sale, or use of the *Cydia pomonella* granulovirus product subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

**DATES:** The cancellation of the product listed in Table 1 of Unit II. was effective December 31, 2009.

#### **FOR FURTHER INFORMATION CONTACT:**

Jeannine Kausch, Biopesticides and Pollution Prevention Division (7511P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 347-8920; fax number: (703) 305-0118; e-mail address: [kausch.jeannine@epa.gov](mailto:kausch.jeannine@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. General Information**

##### *A. Does this Action Apply to Me?*

This action is directed to the public in general, and may be of interest to a

wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

##### *B. How Can I Get Copies of this Document and Other Related Information?*

EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2010-0246. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

##### **II. What Action is the Agency Taking?**

This notice announces the expiration of a *Cydia pomonella* granulovirus end-use product registered under section 3 of FIFRA. Furthermore, this notice serves as a cancellation order and provides terms governing the distribution, sale, and use of existing stocks of the affected product. This registration is listed in Table 1 of this unit.

**TABLE 1.— CYDIA POMONELLA GRANULOVIRUS PRODUCT CANCELLATION**

EPA Registration Number	Product Name
72898-3	Virosoft <sup>CP4</sup>

Table 2 of this unit includes the name and address of record for the registrant of the product in Table 1 of this unit.

**TABLE 2.— REGISTRANT OF THE CANCELLED PRODUCT**

EPA Company Number	Company Name and Address
72898	Biotepp, Incorporated 575 Viewridge Drive Angwin, CA 94508

##### **III. Cancellation Order**

Pursuant to FIFRA section 3, EPA hereby announces the expiration of the *Cydia pomonella* granulovirus registration identified in Table 1 of Unit II. The Agency considers the expiration of a conditional, time-limited registration to be a cancellation under section 3 of FIFRA, for purposes of section 6(a)(1) of FIFRA. Any distribution, sale, or use of existing stocks of the cancelled product identified in Table 1 of Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth in Unit IV. will be considered a violation of FIFRA.

##### **IV. Provisions for Disposition of Existing Stocks**

Existing stocks are those stocks of a registered pesticide product that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this notice includes the following existing stock provisions:

1. The registrant may continue to sell or distribute existing stocks of the *Cydia pomonella* granulovirus product identified in Table 1 of Unit II. with previously approved labeling until June 30, 2011.

2. Persons other than the registrant may continue to sell or distribute existing stocks of the *Cydia pomonella* granulovirus product listed in Table 1 of Unit II. with previously approved labeling until such stocks are exhausted.

3. Persons other than the registrant may use existing stocks of the *Cydia pomonella* granulovirus product listed in Table 1 of Unit II. until existing stocks are exhausted. Any use of existing stocks must be in a manner consistent with the previously approved labeling for that product.

##### **List of Subjects**

Environmental protection, Pesticides and pests, Cancellation order.

Dated: April 6, 2010.

**W. Michael McDavit,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 2010-8521 Filed 4-13-10; 8:45 am]

BILLING CODE 6560-50-S

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2008-0842; FRL-8820-6]

### Methamidophos; Registration Review Proposed Decision; Notice of Availability

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA's proposed registration review decision for the pesticide methamidophos and opens a public comment period on the proposed decision. Registration review is EPA's periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, that the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. Through this program, EPA is ensuring that each pesticide's registration is based on current scientific and other knowledge, including its effects on human health and the environment.

**DATES:** Comments must be received on or before June 14, 2010.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2008-0842, by one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- **Mail:** Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- **Delivery:** OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

**Instructions:** Direct your comments to docket identification (ID) number EPA-

HQ-OPP-2008-0842. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

**Docket:** All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

**FOR FURTHER INFORMATION CONTACT:** For pesticide specific information, contact: Joy Schnackenberg, Chemical Review Manager, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

Washington, DC 20460-0001; telephone number: (703) 308-8072; fax number: (703) 308-7070; e-mail address: [schnackenberg.joy@epa.gov](mailto:schnackenberg.joy@epa.gov).

For general information on the registration review program, contact: Kevin Costello, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5026; fax number: (703) 308-8090; e-mail address: [costello.kevin@epa.gov](mailto:costello.kevin@epa.gov).

## SUPPLEMENTARY INFORMATION:

### I. General Information

#### A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental; human health; farm worker; and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the chemical review manager listed under **FOR FURTHER INFORMATION CONTACT**.

#### B. What Should I Consider as I Prepare My Comments for EPA?

1. **Submitting CBI.** Do not submit this information to EPA through [www.regulations.gov](http://www.regulations.gov) or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. **Tips for preparing your comments.** When submitting comments, remember to:

- Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a

Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

## II. Background

### A. What Action is the Agency Taking?

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA's proposed registration review decision for the pesticide shown in the following table, and opens a 60-day public comment period on the proposed decision. Methamidophos is an organophosphate insecticide, which in 2009 was registered for use on potato, cotton, tomato, and alfalfa grown for seed.

TABLE—REGISTRATION REVIEW PROPOSED DECISION

Registration Review Case Name and Number	Pesticide Docket ID Number	Chemical Review Manager, Telephone Number, E-mail Address
Methamidophos; Case Number 0043	EPA-HQ-OPP-2008-0842	Joy Schnackenberg, (703) 308-8072, <a href="mailto:schnackenberg.joy@epa.gov">schnackenberg.joy@epa.gov</a>

The registration review docket for a pesticide includes earlier documents related to the registration review of the case. For example, the review opened with the posting of a Summary Document, containing a Preliminary Work Plan for public comment. A Final Work Plan was posted to the docket following public comment on the initial docket.

As stated in the Methamidophos Preliminary and Final Work Plan for registration review, the Agency had intended to revise the existing risk assessments for methamidophos. However, after the publication of the Methamidophos Final Work Plan, pursuant to Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, the Agency announced receipt of requests to voluntarily cancel all methamidophos product registrations and then granted the voluntary cancellation requests, establishing December 31, 2009, as the effective cancellation date as published in the **Federal Register** on September 23, 2009 (74 FR 48551; FRL-8437-1) for all of the products registered for use in the United States containing the active ingredient methamidophos. Due to the cancellation order issued affecting all methamidophos product registrations in the United States, the Agency has found that it is not necessary to conduct new risk assessments for methamidophos and is therefore issuing a proposed decision pursuant to 40 CFR 155.53(c)(2) and 40 CFR 155.58. The Agency believes that mitigation measures put into effect on product labeling through the re-registration process are adequate to protect human health and the environment until

existing stocks of methamidophos are exhausted. This proposed registration review decision is described in more detail in the *Methamidophos Proposed Registration Review Decision*, available in the methamidophos docket.

Following public comment, the Agency will issue a registration review decision for products containing methamidophos.

The registration review program is being conducted under congressionally mandated time frames, and EPA recognizes the need both to make timely decisions and to involve the public. Section 3(g) of FIFRA, as amended, required EPA to establish by regulation procedures for reviewing pesticide registrations, originally, with a goal of reviewing each pesticide's registration every 15 years to ensure that a pesticide continues to meet the FIFRA standard for registration. The Agency's final rule to implement this program was issued in August 2006 and became effective in October 2006, and appears at 40 CFR part 155, subpart C. The Pesticide Registration Improvement Act of 2003 (PRIA) was amended and extended in September 2007. FIFRA, as amended by PRIA in 2007, requires EPA to complete registration review decisions by October 1, 2022, for all pesticides registered as of October 1, 2007.

The registration review final rule at 40 CFR 155.58(a) provides for a minimum 60-day public comment period on all proposed registration review decisions. This comment period is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the proposed decision. All comments should be submitted using the methods in

**ADDRESSES**, and must be received by EPA on or before the closing date. These comments will become part of the docket for methamidophos. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

The Agency will carefully consider all comments received by the closing date and will provide a "Response to Comments Memorandum" in the docket. The registration review decision will explain the effect that any comments had on the decision and provide the Agency's response to significant comments.

Background on the registration review program is provided at: [http://www.epa.gov/oppsrrd1/registration\\_review](http://www.epa.gov/oppsrrd1/registration_review). A link to earlier documents related to the registration review of methamidophos is provided at: [http://www.epa.gov/oppsrrd1/registration\\_review/reg\\_review\\_status.htm](http://www.epa.gov/oppsrrd1/registration_review/reg_review_status.htm).

### B. What is the Agency's Authority for Taking this Action?

Section 3(g) of FIFRA and 40 CFR part 155, subpart C, provides authority for this action.

### List of Subjects

Environmental protection, Administrative practice and procedure, Pesticides and pests, Methamidophos.

Dated: April 5, 2010.

**Richard P. Keigwin, Jr.,**  
Director, Pesticide Re-evaluation Division,  
Office of Pesticide Programs.

[FR Doc. 2010-8403 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-S**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPP-2010-0012; FRL-8817-6]

### Notice of Withdrawal of Pesticide Petitions for Residues of Pesticide Chemicals in or on Various Commodities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the withdrawal of pesticide petitions (PP# 6E7075, 2E6478, 3E6592, 6E7140, 9E7548, 6F7136, 7F7242, 3F4188, 3H5662, and 7F7248) proposing the establishment or modification of tolerances for residues of pesticide chemicals in or on various commodities. The petitions were either withdrawn voluntarily by the petitioners or administratively by the Agency.

**FOR FURTHER INFORMATION CONTACT:** Laura Nollen, Registration Division (7505P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-7390; e-mail address: [nollen.laura@epa.gov](mailto:nollen.laura@epa.gov).

#### SUPPLEMENTARY INFORMATION:

#### I. General Information

##### A. Does this Action Apply to Me?

Although this action only applies to the petitioners in question, it is directed to the public in general. Since various individuals or entities may be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding this action, please consult the person listed at the end of the withdrawal summary for the pesticide petition of interest.

##### B. How Can I Get Copies of this Document and Other Related Information?

EPA has established a docket for this action under docket identification (ID) number EPA-HQ-OPP-2010-0012. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305-5805.

#### II. What Action is the Agency Taking?

Under section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, EPA is authorized to establish tolerances for pesticide residues in or on food based on a petition from any person. Ordinarily, EPA resolves these petitions either by granting or denying them. (21 U.S.C. 346a(d)(4)). EPA's regulations, however, allow petitions to be withdrawn by the petitioner without prejudice to refile the petition at a later date (40 CFR 180.8). EPA has received notifications from various petitioners that several petitions, cited above, have been withdrawn, either partially or completely. By this action, EPA is providing the general public with notice that the petitions have been withdrawn by the petitioners. The petitioners may refile these petitions in the future without prejudice.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions covered by this notice, prepared by the petitioner, was included in a docket EPA created for each rulemaking. The docket for each of the petitions is available on-line at <http://www.regulations.gov>.

##### A. PP 2E6478 (Thiophanate-methyl)

EPA issued a notice in the **Federal Register** of April 12, 2006 (71 FR 18739) (FRL-7774-1) (EPA-HQ-OPP-2006-0283), which announced the submission of a pesticide petition (PP 2E6478) by the Interregional Research Project No. 4 (IR-4), 500 College Road East, Suite 201W, Princeton, NJ 08540. This petition requested that EPA amend 40 CFR 180.371 by establishing tolerances for residues of the fungicide thiophanate-methyl, (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis[carbamate]), its oxygen analogue, dimethyl-4,4-o-phenylene bis(allophonate), and its metabolite MBC in or on the food commodities corn, sweet, kernel plus cob with husk removed; corn, sweet, forage; and corn, sweet, stover at 0.05 parts per million (ppm). On December 26, 2009, IR-4 notified EPA that it was withdrawing this petition.

##### B. PP 6E7075 (Thiophanate-methyl)

EPA issued a notice in the **Federal Register** of November 8, 2006 (71 FR 65504) (FRL-8082-7) (EPA-HQ-OPP-2006-0644), which announced the submission of a pesticide petition (PP 6E7075) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. This petition requested that EPA amend 40 CFR 180.371 by establishing tolerances for residues of the fungicide

thiophanate-methyl, (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis[carbamate]), its oxygen analogue, dimethyl-4,4-o-phenylene bis(allophonate), and its benzimidazole-containing metabolites, in or on the food commodities bushberry subgroup 13B at 4.0 ppm; junberry, lingonberry, and salal at 4.0 ppm; caneberry subgroup 13A at 25 ppm; *Brassica*, leafy greens, subgroup 5B at 7.0 ppm; turnip greens at 7.0 ppm; fruit, citrus, group 10 at 6.0 ppm; ginseng at 0.3 ppm; mushroom at 0.09 ppm; nut, tree, group 14 at 0.2 ppm; sunflower at 0.05 ppm; vegetable, tuberous and corm, subgroup 1C at 0.1 ppm; tomato and tomatillo at 1.4 ppm; and mustard (grown for seed) at 0.1 ppm. This petition also proposed to amend 40 CFR 180.371 by amending the existing tolerance for the raw agricultural commodities pistachio from 0.1 ppm to 0.9 ppm, and almond hulls from 1.0 ppm to 14.0 ppm. On December 26, 2009, IR-4 notified EPA that it was withdrawing this petition.

##### C. PP 3E6592 (Pyridalyl)

EPA issued a notice in the **Federal Register** of December 5, 2003 (68 FR 68044) (FRL-7334-6) (EPA-HQ-OPP-2003-0276), which announced the submission of a pesticide petition (PP 3E6592) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. In this notice, PP 3E6592 was inadvertently referred to as PP 2E6592. This petition requested that EPA amend 40 CFR 180.640 by establishing tolerances for residues of the insecticide pyridalyl, (pyridine, 2-[3-[2,6-dichloro-4-[(3,3-dichloro-2-propenyl)oxy]phenoxy]propoxy]-5-(trifluoromethyl), in or on the food commodities *Brassica*, leafy greens, subgroup 5B at 30 ppm; and turnip greens at 30 ppm. On November 1, 2009, IR-4 notified EPA that it was withdrawing this petition.

##### D. PP 6E7140 (Deltamethrin)

EPA issued a notice in the **Federal Register** of February 7, 2007 (72 FR 5706) (FRL-8111-8) (EPA-HQ-OPP-2007-0004), which announced the submission of a pesticide petition (PP 6E7140) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. This petition requested that EPA amend 40 CFR 180.435 by establishing tolerances for residues of the insecticide deltamethrin, ((1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester), and its major metabolites, trans deltamethrin ((S)-alpha-cyano-m-phenoxybenzyl-(1R,3R)-3-(2,2-dibromovinyl)-2,2-

dimethylcyclopropanecarboxylate) and alpha-R-deltamethrin ((R)-alpha-cyano-m-phenoxybenzyl-(1R,3R)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate) in or on the food commodities flax, seed at 0.1 ppm; and flax, meal at 0.3 ppm. On November 17, 2009, IR-4 notified EPA that it was withdrawing this petition.

*E. PP 9E7548 (Diazinon)*

EPA issued a notice in the **Federal Register** of June 10, 2009 (74 FR 27538) (FRL-8417-7) (EPA-HQ-OPP-2009-0302), which announced the submission of a pesticide petition (PP 9E7548) by IR-4, 500 College Road East, Suite 201W, Princeton, NJ 08540. This petition requested that EPA amend 40 CFR 180.589 by establishing tolerances for residues of the insecticide diazinon, *O,O*-diethyl *O*-[6-methyl-2-(1-methylethyl)-4-pyrimidinyl]phosphorothioate (CAS No. 333-41-5), in or on the food commodity mushrooms at 0.75 ppm. On December 23, 2009, IR-4 notified EPA that it was withdrawing this petition.

*F. PP 6F7136 (Oxamyl)*

EPA issued a notice in the **Federal Register** of May 9, 2007 (72 FR 26372) (FRL-8121-5) (EPA-HQ-OPP-2007-0219), which announced the submission of a pesticide petition (PP 6F7136) by E.I. DuPont de Nemours and Company, DuPont Crop Protection, Laurel Run Plaza, P.O. Box 30, Newark, DE 19714-0030. This petition requested that EPA amend 40 CFR 180.303 by establishing tolerances for residues of the insecticide oxamyl, (methyl *N,N'*-dimethyl-*N*-[(methylcarbamoyl)-oxy]-1-thiooxamimidate), in or on the food commodities beets, sugar, roots at 0.010 ppm; beets, sugar, tops at 0.20 ppm; and beets, sugar, molasses at 0.030 ppm. On December 14, 2009, E. I. DuPont de Nemours and Company notified EPA that it was withdrawing this petition.

*G. PP 7F7242 (Oxamyl)*

EPA issued a notice in the **Federal Register** of September 28, 2007 (72 FR 55204) (FRL-8147-1) (EPA-HQ-OPP-2007-0219), which announced the submission of a pesticide petition (PP 7F7242) by E.I. DuPont de Nemours and Company, DuPont Crop Protection, Laurel Run Plaza, P.O. Box 30, Newark, DE 19714-0030. This petition requested that EPA amend 40 CFR 180.303 by establishing tolerances for residues of the insecticide oxamyl, (methyl *N,N'*-dimethyl-*N*-[(methylcarbamoyl)-oxy]-1-thiooxamimidate), and its oxime metabolite, methyl *N,N*-dimethyl-*N*-hydroxy-1-thiooxamimidate, calculated as oxamyl in or on the food

commodities wheat forage, wheat hay, and wheat straw at 0.20 ppm. On December 14, 2009, E. I. DuPont de Nemours and Company notified EPA that it was withdrawing this petition.

*H. PP 3F4188; 7F7248; 3H5662 (Chlorpyrifos)*

EPA issued a notice in the **Federal Register** of April 16, 2008 (73 FR 20632) (FRL-8359-1) (EPA-HQ-OPP-2008-0173), which announced the submission of pesticide petitions (PP 3F4188, 7F7248, and 3H5662) by Dow Agro Sciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. These petitions requested that EPA amend 40 CFR 180.342 by establishing tolerances for residues of the insecticide chlorpyrifos, (*O,O*-diethyl-*O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate), in or on the food commodities grass, forage (Crop group 17) at 11 ppm; grass, hay (Crop group 17) at 30 ppm; barley, grain at 0.5 ppm; barley, straw at 2 ppm; barley, hay at 3 ppm; and barley, milled feed fractions at 1 ppm. On February 13, 2009, Dow Agro Sciences LLC notified EPA that it was withdrawing these petitions.

### III. Regulatory Assessment Requirements

This action provides notice that various tolerance petitioners have withdrawn, partially or completely, their petitions to establish tolerances. Under 40 CFR 180.8, petitioners are authorized to take such action. Because EPA is merely providing notice of actions of outside parties, the regulatory assessment requirements imposed on rulemaking do not apply to this action.

#### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 1, 2010.

**Lois Rossi,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 2010-8292 Filed 4-13-10; 8:45 am]

**BILLING CODE 6560-50-S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested

April 8, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 14, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or via the Internet at Nicholas.A.Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review", (3)

click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

**FOR FURTHER INFORMATION CONTACT:**

Judith B. Herman, Office of Managing Director, (202) 418-0214. For additional information or copies of the information collection(s), contact Judith B. Herman, 202-418-0214, Judith-B.Herman@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060-0953.  
Title: Sections 95.1111 and 95.1113, Wireless Medical Telemetry Service (WMTS).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 2,728 respondents; 2,728 responses.

Estimated Time per Response: 4 hours.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. Sections 154(i), 161, 301, 302, 303(e), 303(f), 303(r), 304, 307 and 332(b).

Total Annual Burden: 10,912 hours.

Total Annual Cost: \$545,000.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: No information is requested that would require confidentiality.

Needs and Uses: The Commission will submit this expiring information collection during this comment period to the Office of Management and Budget (OMB) in order to obtain the full three year clearance from them. There is no change in the reporting, recordkeeping and/or third party disclosure requirements. However, the Commission is adjusting their burden estimates by 912 total annual hours and \$45,000 in annual costs. This is due to 228 more respondents subject to these requirements.

In June 2000 the Commission adopted rules which enhance the ability of

health care providers to offer high quality and cost effective care to patients with acute and chronic health care needs.

Medical telemetry equipment is used in hospitals and health care facilities to transmit patient measurement data, such as pulse and respiration rates to a nearby receiver, that permits greater patient mobility and increased comfort.

The Commission allocated spectrum to WMTS on a primary basis, which allows potentially life-critical medical telemetry equipment to operate on an interference-protected basis.

The Commission also adopted services rules for WMTS that "license by rule" meaning that users are permitted to operate WMTS equipment that complies with the rules without the need to apply for a license from the Commission.

Furthermore, the Commission adopted rules to designate a frequency coordinator, who maintains a database of all WMTS equipment.

Without the database, there would be no record of WMTS usage because WMTS transmitters are not individually licensed.

All parties using equipment in the WMTS are required to coordinate/register their operating frequency and other relevant technical operating parameters with the designated coordinator.

The database provides a record of the frequencies used by each facility or device to assist parties in selecting frequencies to avoid interference.

Without the database, there would be no record of WMTS usage because WMTS transmitters will not be individually licensed. The database is used by health care providers to plan for specific frequency use within a geographic area, especially where numerous WMTS operations may occur. The coordinator will also notify users of potential frequency conflicts.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010-8466 Filed 4-13-10; 8:45 am]

**BILLING CODE 6712-01-S**

**FEDERAL COMMUNICATIONS COMMISSION**

**Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested**

April 8, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 - 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 14, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or via the Internet at Nicholas\_A\_Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:**

Judith B. Herman, Office of Managing Director, (202) 418-0214. For additional information, contact Judith B. Herman, 202-418-0214, Judith-B.Herman@fcc.gov.



**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060–1136.

Title: Spectrum Dashboard Customer Feedback.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, Federal Government, and state, local or tribal government.

Number of Respondents and Responses: 22,000 respondents; 22,000 responses.

Estimated Time Per Response: .05 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Voluntary. Statutory authority for this information collection is contained in the American Reinvestment and Recovery Act of 2009 (ARRA), Pub. L. No. 111–5, 123 Stat 115 (2009).

Total Annual Burden: 1,100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: Yes. The FCC has a Privacy Policy that covers individuals who access the FCC's webpages, at: <<http://www.fcc.gov/fccprivacypolicy.html>>. There is also a system of records, FCC/OMD–20, "Inter-office and Remote Access Internet E-Mail Systems," which was published in the **Federal Register** on April 5, 2006 (65 FR 17234, 17265) and a Privacy Impact Assessment at: <[http://www.fcc.gov/omd/privacyact/System\\_of\\_records/pia-email.pdf](http://www.fcc.gov/omd/privacyact/System_of_records/pia-email.pdf)> to cover the collection of IP addresses of those who access FCC webpages.

Nature and Extent of Confidentiality: No personally identifiable information will be obtained as part of this information collection, except the collection of IP addresses when an individual or other entity access the FCC's webpages.

Needs and Uses: The Commission sought and obtained emergency processing of this information collection in March 2010. Emergency OMB approval requests are only granted for six months. This collection is due to expire in September 2010. Therefore, the Commission is publishing this 60 day notice in anticipation of submitting this for the full OMB review and clearance. The Commission is requesting an extension of the current OMB approval and there is no change in the Commission's estimates.

As part of the Commission Broadband Plan, the FCC has created the Spectrum Dashboard, a database of the frequency bands from 225 MHz – 3.7 GHz available for non-federal uses, including for broadband deployment

across the nation. The Spectrum Dashboard also makes information transparent and readily available to interested stakeholders (e.g., service providers, manufacturers, innovators, investors, etc.) to better enable them to gain access to spectrum and to help them assist the Commission in our spectrum policy decisions. The increased accessibility to spectrum and licensing information made possible by the Spectrum Dashboard is particularly valuable at this time as multiple stakeholders search for ways to participate in the deployment of wireless broadband throughout the nation.

The purpose of this collection is to enable individuals and others to voluntarily provide feedback on their experience with the Spectrum Dashboard. This collection will provide the Commission with unique data on how stakeholders are using the Spectrum Database and what improvements or enhancements they would like to see in future versions of the Spectrum Dashboard.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–8491 Filed 4–13–10; 8:45 am]

**BILLING CODE 6712–01–S**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **Notice of Public Information Collections Being Submitted for Review and Approval to the Office of Management and Budget (OMB), Comments Requested**

April 8, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collections, as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the

respondents, including the use of automated collection techniques or other forms of information technology; and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 14, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via email to Nicholas.A.Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov and Cathy.Williams@fcc.gov. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page <http://reginfo.gov/public/do/PRAMain>, (2) look for the section of the web page called "Currently Under Review", (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections, contact Cathy Williams on (202) 418–2918.

#### **SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060–0837.

Title: Application for DTV Broadcast Station License.

Form Number: FCC Form 302–DTV.

Type of Review: Reinstatement without change of a previously approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions.



Number of Respondents and Responses: 300 respondents and 300 responses.

Estimated Time per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 600 hours.

Total Annual Costs: \$133,800.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: The Commission is requesting reinstatement of OMB control number 3060-0837. In 2008, we merged the requirements that were previously under this OMB control number into an existing information collection OMB control number 3060-0029, Application for TV Broadcast Station License, FCC Form 302-TV. Although the requirements were merged under the supporting statement, the forms themselves remained separate and only shared the same OMB control number. Since that time, we find the merging of these requirements under one OMB control number as ineffective causing delays for submission to OMB for review especially when the various requirements were revised by multiple Commission actions.

Form 302-DTV is used by licensees and permittees of Digital TV ("DTV") broadcast stations to obtain a new or modified station license and/or to notify the Commission of certain changes in the licensed facilities of those stations. It may be used: (1) To cover an authorized construction permit (or auxiliary antenna), provided that the facilities have been constructed in compliance with the provisions and conditions specified on the construction permit; or (2) To implement modifications to existing licenses as permitted by 47 CFR Sections 73.1675(c) or 73.1690(c).

OMB Control Number: 3060-0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC Form 349.

Type of Review: Reinstatement without change of a previously approved collection.

Respondents: Business or other for-profit entities; Not-for-profit

institutions; State, local or tribal government.

Number of Respondents and Responses: 1,200 respondents and 1,200 responses.

Estimated Time per Response: 1 to 1.5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 4,500 hours.

Total Annual Costs: \$4,598,100.00.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: The Commission is requesting reinstatement of OMB control number 3060-0405. In 2008, we merged the requirements that were previously under this OMB control number into an existing information collection, OMB control number 3060-0029, Application for TV Broadcast Station License, FCC Form 302-TV. Although the requirements were merged under the supporting statement, the forms themselves remained separate and only shared the same OMB control number. Since that time, we find that the merging of these requirements under one OMB control number is ineffective, causing delays in submissions to OMB for review, especially when the various requirements were revised by multiple and simultaneously adopted Commission actions.

FCC Form 349 is used to apply for authority to construct a new FM translator or FM booster broadcast station, or to make changes in the existing facilities of such stations.

Form 349's Newspaper Notice (third party disclosure) requirement; 47 CFR § 73.3580. Form 349 also contains a third party disclosure requirement, pursuant to Section 73.3580. This rule requires stations applying for a new broadcast station, or to make major changes to an existing station, to give local public notice of this filing in a newspaper of general circulation in the community in which the station is located. This local public notice must be completed within 30 days of the tendering of the application. This notice must be published at least twice a week for two consecutive weeks in a three-week period. In addition, a copy of this notice

must be placed in the station's public inspection file along with the application, pursuant to Section 73.3527. This recordkeeping information collection requirement is contained in OMB Control No. 3060-0214, which covers Section 73.3527.

OMB Control Number: 3060-0029.

Title: Application for Construction Permit for Reserved Channel Noncommercial Educational Broadcast Station.

Form Number: FCC Form 340.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 2,710 respondents and 2,710 responses.

Estimated Time per Response: 2 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 6,700 hours.

Total Annual Costs: \$27,894,950.00.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On April 7, 2009, the Commission adopted a Notice of Proposed Rule Making in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, FCC 09-30, 24 FCC Rcd 5239 (2009). On January 28, 2010, the Commission adopted a First Report and Order in the Matter of Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures, MB Docket No. 09-52, FCC 10-24. In the First Report and Order, the Commission adopted the Tribal Priority proposed in the Notice of Proposed Rule Making, with some modifications. Under the Tribal Priority, a Section 307(b) priority will apply to an applicant meeting all of the following criteria: (1) The applicant is either a federally recognized Tribe or tribal consortium, or an entity 51 percent or more owned or controlled by a Tribe or Tribes (with the Tribes or entities occupying tribal lands that are covered

by at least 50 percent of the daytime principal community contour of the proposed facility); (2) at least 50 percent of the daytime principal community contour of the proposed facilities covers tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on tribal lands; and (4) the applicant proposes the first local tribal-owned noncommercial educational transmission service at the proposed community of license. The proposed Tribal Priority would apply, if applicable, before the fair distribution analysis currently used by noncommercial educational applicants. The Tribal Priority does not prevail over an applicant proposing first overall reception service to a significant population.

FCC Form 340 and its instructions are being revised to accommodate those applicants qualifying for the new Tribal Priority. Specifically, we are adding new Questions 1 and 2, which seek information as to the applicant's eligibility for the Tribal Priority and direct applicants claiming the priority to prepare and attach an exhibit, to Section III. The instructions for Section III have been revised to assist applicants with completing the new questions and preparing the exhibit.

Also, the Commission is removing FCC Form 302-DTV, Application for Digital Television Broadcast Station License, and FCC Form 349, Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station, from this information collection to allow the Commission to more effectively manage the information collections. FCC Form 302-DTV will have its previous OMB control number reinstated (3060-0837) and FCC Form 349 will have its previous OMB control number reinstated as well (3060-0405).

OMB Control Number: 3060-0027.

Title: Application for Construction Permit for Commercial Broadcast Station.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 4,453 respondents and 7,889 responses.

Estimated Time per Response: 3 to 6.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 19,561 hours.

Total Annual Costs: \$85,096,314.00.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09-52, FCC 10-24. The Order adopts changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b) of the Communications Act of 1934, as amended (the "Act"). With regard to AM application processing, the Commission adopted a proposal to explicitly prohibit the downgrading of proposed AM facilities that receive a dispositive preference under Section 307(b) of the Act and thus are not awarded through competitive bidding. Specifically, an AM applicant that receives a dispositive preference under Section 307(b) will not be allowed to later modify that proposal to serve a smaller population or otherwise negate the factors that led to the award of the preference. The Commission imposed these restrictions for a period of four years of on-air operations. These procedural safeguards are necessary to protect the integrity of our Section 307(b) analyses.

Consistent with actions taken by the Commission in the Order, FCC Form 301 has been revised to add questions, specifically asking the applicants to certify that the construction permit application complies with the four year service requirements. The instructions for FCC Form 301 have been revised to assist applicants with completing the new questions.

OMB Control Number: 3060-0996.

Title: AM Auction Section 307(b) Submissions.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 160 respondents and 160 responses.

Estimated Time per Response: 0.5 to 3 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 307(b) and 309 of the Communications Act of 1934, as amended.

Total Annual Burden: 375 hours.

Total Annual Costs: \$71,200.00.

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09-52, FCC 10-24. The Order adopts changes to certain procedures associated with the award of broadcast radio construction permits by competitive bidding, including modifications to the manner in which it awards preferences to applicants under the provisions of Section 307(b). In the Order, the Commission added a new Section 307(b) priority that would apply only to Native American and Alaska Native Tribes, tribal consortia, and majority tribal-owned entities proposing to serve tribal lands. The priority is only available when all of the following conditions are met: (1) the applicant is either a federally recognized Tribe or tribal consortium, or an entity that is 51 percent or more owned or controlled by a Tribe or Tribes; (2) at least 50 percent of the daytime principal community contour of the proposed facilities will cover tribal lands, in addition to meeting all other Commission technical standards; (3) the specified community of license is located on tribal lands; and (4) in the commercial AM service, the applicant must propose first or second aural reception service or first local commercial tribal-owned transmission service to the proposed community of license, which must be located on tribal lands. Applicants claiming Section 307(b) preferences using these factors will submit information to substantiate their claims. The Commission will dismiss, without further processing, the previously filed AM auction filing window application and technical proposal of any applicant that fails to file an amendment addressing the

Section 307(b) criteria, where required. Mutually exclusive AM applicants may not use this as an opportunity to change the technical proposal specified in the AM auction filing window application. The Section 307(b) amendment must be based on the technical proposal as specified in the AM auction filing window application.

OMB Control Number: 3060-0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Forms 314 and 315.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 4,820 respondents and 12,520 responses.

Estimated Time per Response: 2 to 6 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i), 303(b) and 308 of the Communications Act of 1934, as amended.

Total Annual Burden: 18,443 hours

Total Annual Costs: \$36,168,450.00

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09-52; FCC 10-24. The Order adopts rule changes designed to streamline and clarify certain procedures associated with the award of broadcast radio construction permits by competitive bidding. In the Order, the Commission also adopted a priority under Section 307(b) of the Communications Act of 1934, as amended, to assist federally recognized Native American Tribes and Alaska Native Villages ("Tribes"), enrolled members of Tribes, and entities primarily owned or controlled by Tribes

or enrolled members of Tribes, in obtaining broadcast radio construction permits designed primarily to serve tribal lands (the "Tribal Priority"). Applicants affiliated with Tribes who meet certain conditions regarding tribal membership and signal coverage qualify for the Tribal Priority, which in most cases will enable the qualifying applicants to obtain construction permits without proceeding to competitive bidding, in the case of commercial stations, or to point system evaluation, in the case of noncommercial educational ("NCE") stations. Once a permit is obtained, it cannot be assigned or transferred to another person or entity for a period beginning with issuance of the construction permit until the station has completed four years of on-air operations, unless the assignee or transferee also qualifies for the Tribal Priority.

Consistent with actions taken by the Commission in the Order, the following changes are made to Forms 314 and 315: Section I of each form includes a new question asking applicants to indicate whether any of the authorizations involved in the transaction were obtained (or, in the case of non-reserved band commercial FM stations) the allotment for the station was obtained through the Tribal Priority. The instructions for Section I of Forms 314 and 315 have been revised to assist applicants with completing the new questions.

OMB Control Number: 3060-0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form Number: FCC Form 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local or tribal government.

Number of Respondents and Responses: 750 respondents and 750 responses.

Estimated Time per Response: 1.5 to 4.5 hours.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in Sections 154(i) and 310(d) of the Communications Act of 1934, as amended.

Total Annual Burden: 1,231 hours

Total Annual Costs: \$711,150.00

Privacy Impact Assessment(s): No impacts.

Nature and Extent of Confidentiality: There is no need for confidentiality and respondents are not being asked to submit confidential information to the Commission.

Needs and Uses: On January 28, 2010, the Commission adopted a First Report and Order and Further Notice of Proposed Rulemaking (the "Order") in MB Docket No. 09-52, FCC 10-24. The Order adopts rule changes designed to streamline and clarify certain procedures associated with the award of broadcast radio construction permits by competitive bidding. To prevent unjust enrichment by parties that acquire broadcast construction permits through the use of a bidding credit in an auction, Section 73.5007(c) of the Rules requires reimbursement to the Commission of all or part of the bidding credit upon a subsequent assignment or transfer of control, if the proposed assignee or transferee is not eligible for the same percentage of bidding credit. The rule is routinely applied to "long form" assignment or transfer applications filed on FCC Forms 314 and 315. In the Order, the Commission also sought to clarify that the unjust enrichment payments to the government must be made even when an assignment or transfer is pro forma in nature and therefore filed on FCC Form 316. This ensures that applicants do not use the summary pro forma assignment and transfer procedures to circumvent the unjust enrichment requirements.

Consistent with actions taken by the Commission in the Order, FCC Form 316 has been revised to add the broadcast auction-based questions presently included on FCC Forms 314 and 315, specifically asking the applicants to certify that the proposed assignment or transfer complies with the unjust enrichment provisions of the Commission's competitive bidding rules. The instructions for FCC Form 316 have been revised to assist applicants with completing the new questions.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010-8492 Filed 4-13-10; 8:45 am]

**BILLING CODE 6712-01-S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 8, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 14, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or via the Internet at [Nicholas\\_A\\_Fraser@omb.eop.gov](mailto:Nicholas_A_Fraser@omb.eop.gov) and to the Federal Communications Commission via email to [PRA@fcc.gov](mailto:PRA@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information, contact Judith B. Herman, 202–418–0214, [Judith-B.Herman@fcc.gov](mailto:Judith-B.Herman@fcc.gov).

### SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0895.  
Title: Numbering Resource Optimization.

Form No.: FCC Form 502.  
Type of Review: Extension of a currently approved collection.  
Respondents: Business or other for-profit, and state, local or tribal government.

Number of Respondents and Responses: 2,780 respondents; 7,385 responses.

Estimated Time Per Response: 1 – 44.4 hours.

Frequency of Response: On occasion and semi-annual reporting requirement and recordkeeping requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. sections 151, 153, 154, 201–205, and 251.

Total Annual Burden: 131,782 hours.  
Total Annual Cost: \$3,462,800.  
Privacy Act Impact Assessment: N/A.  
Nature and Extent of Confidentiality: Disaggregated, carrier specific forecast and utilization data will be treated as confidential and will be exempt from public disclosure under 5 U.S.C. 552(b)(4).

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) during this 30 day comment period in order to obtain the full three year clearance from them. The Commission is requesting an extension of this information collection (no change in the reporting and recordkeeping requirements). Finally, there is no change in the Commission's burden estimates.

The data collected by FCC Form 502 helps the Commission manage the ten-digit North American Numbering Plan (NANP), which is currently being used by the United States and 19 other countries. Under the Communications Act of 1934, as amended, the Commission was given “exclusive jurisdictions over those portions of the North American Numbering Plan that pertain to the United States.” Pursuant to that authority the Commission conducted a rulemaking in March 2000 that the Commission found that mandatory data collection is necessary to efficiently monitor and manage numbering use. The Commission received OMB approval for this requirement and the following: (a) Utilization/Forecast Report; (b) application for initial numbering resource; (c) application for growth numbering resources; (d) recordkeeping requirement; (e) notifications by state commissions, (f) demonstration to state

commission, and (g) petitions for additional delegation of numbering authority.

The data from this information collection is used by the FCC, state regulatory commissions, and the NANPA to monitor numbering resource utilization by all carriers using the resource and to project the dates of area code and NANP exhaust.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010–8501 Filed 4–13–10 8:45 am]

**BILLING CODE 6712–01–S**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 9, 2010.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501 – 3520. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a currently valid OMB control number.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be

submitted on or before June 14, 2010. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202-395-5167 or via the Internet at Nicholas.A.Fraser@omb.eop.gov and to the Federal Communications Commission via email to PRA@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Judith B. Herman, Office of Managing Director, (202) 418-0214. For additional information, contact Judith B. Herman, 202-418-0214, Judith-B.Herman@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

OMB Control Number: 3060-0228.

Title: Section 80.59, Compulsory Ship Inspections.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local or tribal government.

Number of Respondents and Responses: 100 respondents; 100 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 154, 303, 307(e), 309, and 332.

Total Annual Burden: 200 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality.

Needs and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget in order to obtain the full three year clearance from them. The Commission is requesting an extension (no change in the reporting and/or recordkeeping requirement). There is a 260 hour reduction in the total annual burden which is due to fewer respondents subject to these requirements and a decrease in the number of vessels requesting waivers.

The requirements contained in section 80.59 of the Commission's rules are necessary to implement the provisions of section 362(b) of the Communications Act of 1934, as amended. Section 80.59(d) states that the Commission may, upon a finding

that the public interest would be served, grant a waiver of the annual inspection required by section 362(b), for a period of not more than 90 days for the sole purpose of enabling the United States vessel to complete its voyage and proceed to a port in the United States when an inspection can be held. An information application must be submitted by a ship's owner, operator, or authorized agent. The application must be submitted to the Commission's District Director or Resident Agent in charge of the FCC office nearest the port of arrival at least three days for the ship's arrival. The application must provide the specific information in section 80.59.

Although this rule section also requires notation in the ship's station log that certifies that the ship has/has not passed inspection, that requirement has been accounted for in OMB Control Number 3060-0835.

The information is used by FCC staff to determine the eligibility of a vessel for a waiver of the required annual radio station inspection, pursuant to section 362(b) of the Communications Act of 1934, as amended. If the collection were not conducted, the Commission would be unable to grant eligible vessels waivers and such ships would be unable to sail until an inspection was performed. This, in turn, would require an increased expenditure for agency travel funds and/or additional personnel, as well as additional operating costs for vessels required to remain in port until an inspection can be completed.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010-8493 Filed 4-13-10; 8:45 am]

**BILLING CODE 6712-01-S**

## FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2907]

### Petition for Reconsideration of Action in Rulemaking Proceeding

April 1, 2010.

**SUMMARY:** Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents is available for viewing and copying in Room CY-B402, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's

copy contractor, Best Copy and Printing, Inc. (BCPI) (1-800-378-3160).

Oppositions to these petitions must be filed by April 29, 2010. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925-6425 MHz/3700-4200 MHz Bands and 14.0-14.5 GHz/11.7-12.2 GHz Bands (IB Docket No. 02-10)

Amendment of Parts 2 and 25 of the Commission's Rules to Allocate Spectrum and Adopt Service Rules and Procedures to Govern the Use of Vehicle-Mounted Earth Stations in Certain Frequency Bands Allocated to the Fixed-Satellite Service (IB Docket No. 07-101)

Number of Petitions Filed: [2]

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary,*

*Office of the Secretary,*

*Office of Managing Director.*

[FR Doc. 2010-8494 Filed 4-13-10 8:45 am]

**BILLING CODE 6712-01-S**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be

conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at [www.ffiec.gov/nic/](http://www.ffiec.gov/nic/).

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 10, 2010.

**A. Federal Reserve Bank of Richmond** (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. *CapGen Capital Group III LLC, and CapGen Capital Group III LP*, both of New York, New York; to acquire additional voting shares, for a total of more than 50 percent of the voting shares, of Seacoast Banking Corporation of Florida, and thereby indirectly acquire additional voting shares of Seacoast National Bank, both of Stuart, Florida.

**B. Federal Reserve Bank of Atlanta** (Clifford Stanford, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. *Ovation Holdings, Inc.*, Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of National Bank of Southwest Florida, Port Charlotte, Florida.

Board of Governors of the Federal Reserve System, April 9, 2010.

**Jennifer J. Johnson**,  
Secretary of the Board.

[FR Doc. 2010-8485 Filed 4-13-10; 8:45 am]

**BILLING CODE 6210-01-S**

## FEDERAL MARITIME COMMISSION

### Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (<http://www.fmc.gov>) or by contacting the Office of Agreements at (202)-523-5793 or [tradeanalysis@fmc.gov](mailto:tradeanalysis@fmc.gov).

*Agreement No.*: 011983-001.  
*Title*: CSAV/WWL Caribbean Space Charter Agreement.

*Parties*: Compania Sud Americana de Vapores S.A. ("CSAV") and Wallenius Wilhelmsen Logistics A/S ("WWL").

*Filing Party*: Walter H. Lion, Esq., McLaughlin & Stern, LLP, 260 Madison Avenue, New York, New York 10016.

*Synopsis*: The amendment expands the scope to cover the transportation of vehicles and other cargo from ports on the U.S. east coast to ports in Chile, Ecuador, Peru, Panama, Colombia, and Venezuela.

*Agreement No.*: 012042-002.  
*Title*: MOL/ELJSA Slot Exchange Agreement.

*Parties*: Evergreen Line Joint Service Agreement and Mitsui O.S.K. Lines, Ltd.

*Filing Party*: Robert B. Yoshitomi, Esq., Nixon Peabody, LLP, Gas Company Tower, 555 West Fifth Street 46th Floor, Los Angeles, CA 90013.

*Synopsis*: The amendment expands the geographic scope to include Korea, modifies the slots the parties may transfer to each other, removes ELJSA as a vessel provider, and changes the name of the Agreement.

*Agreement No.*: 012043-002.  
*Title*: MOL/APL/HMM Asia/USWC Slot Charter Agreement.

*Parties*: American President Lines, Ltd.; APL Co. Pte. Ltd.; Hyundai Merchant Marine; and Mitsui O.S.K. Lines, Ltd.

*Filing Party*: Robert Yoshitomi, Esq., Nixon Peabody, LLP, 555 West Fifth Street, 46th Floor, Los Angeles, CA 90013.

*Synopsis*: The amendment adds China and Taiwan to the geographic scope of the agreement, changes the number of slots that may be sold, and updates party addresses.

*Agreement No.*: 012044-003.  
*Title*: MOL/CMA CGM Slot Charter Agreement.

*Parties*: CMA CGM S.A. and Mitsui O.S.K. Lines, Ltd.

*Filing Party*: Robert B. Yoshitomi, Esq., Nixon Peabody LLP, Gas Company Tower, 555 West Fifth Street, 46th Floor, Los Angeles, CA 90013.

*Synopsis*: The amendment revises the number of slots MOL is authorized to sell to CMA CGM.

By Order of the Federal Maritime Commission.

Dated: April 9, 2010,

**Karen V. Gregory**,  
Secretary.

[FR Doc. 2010-8547 Filed 4-13-10; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean

Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. Chapter 409 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

### Non-Vessel-Operating Common Carrier—Ocean Transportation Intermediary

Royal Cargo Line, Inc., 612 E. Dallas Road, Suite 400, Grapevine, TX 76051, *Officers*: Robert Ryan, Director, Imports/Customs, (Qualifying Individual) Eric Wolfe, President/Vice President.

Metro Freight Group Inc., 24 Putnam Avenue, Valley Stream, NY 11580, *Officer*: Terry H. Chen, President/VP/Sec./Treas., (Qualifying Individual).

Oceanic Logistics, Inc., 1417 Ashford Lane, First Floor, Aurora, IL 60502, *Officers*: Inderjeet Mangat, President, (Qualifying Individual) Fatch Harisinghani, Treasurer/Secretary.

Port Alliance Logistics International, Inc., dba Port Alliance Logistics (Los Angeles), dba Port Alliance Logistics (New York), 70 East Sunrise Highway, Suite 607, Valley Stream, NY 11581, *Officers*: Shawn Mak, Director, (Qualifying Individual), Huang-Yu L. Lin, President.

WTG Logistics, Inc. dba WTC International, 140 Epping Road, Exeter, NH 03833, *Officers*: Charles F. McFeeters, Jr., Vice President, (Qualifying Individual), William Walsh, President.

J.C.C. International Enterprises, Inc., State Road #190 Km. 3.4 Sababa Abajo Ward, Carolina, PR 00984, *Officers*: Liza Vilanova, President (Qualifying Individual) Ivonne Vilanova, Secretary.

Propel Logistics International, Inc., 1111 Watson Center Road, #C, Carson, CA 90745, *Officers*: Arthur L. Bravo, President, (Qualifying Individual) Thomas Bowling, Treasurer.

FC Logistics, USA, Inc., 473 Broadway, Suite 215, Bayonne, NJ 07002. *Officer*: Nejat K. Denizli, Sole Officer, (Qualifying Individual).

### Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary:

Encore Trade & Logistics, Inc., 6307 NW. 99th Avenue, Doral, FL 33178, *Officer*: Oscar Alvarez, President/Secretary, (Qualifying Individual).  
AFS Advantage, L.L.C., 8141 East 41st Street, Tulsa, OK 74145, *Officers*: Shane O'Neal, Operations Officer,

(Qualifying Individual) Brian P. Barker, Owner.  
 Sariusa, LLC, 8300 NW. 53rd Street, Suite 350, Doral, FL 33166. *Officers:* Juan C. Gonzalez, Manager, (Qualifying Individual) Luis Torres, Managing Member 1.  
 Caribbean Warehouse & Logistics, Inc., Royal Industrial Park, Bldg. B, Unit 4, Catano, PR 00918. *Officers:* Lemuel J. Toledo, Vice President, (Qualifying Individual) Ivan Santos, President.  
 Octopus Line Corporation, 8358 NW. 66th Street, Miami, FL 33166, *Officers:* Holmes A. Cruz, President, (Qualifying Individual) Zulema L. Diaz, Secretary.  
 Top Since Logistics, Inc., 1255 Corporate Center Drive, Suite 210, Monterey Park, CA 91754, *Officer:* Pair L. Williams, Vice President, (Qualifying Individual) Wei Wen, President.  
 Servi-Fast International Corp., 7999 NW. 81st Place, Medley, FL 33166, *Officers:* Ian C. Alvarez, Vice President, (Qualifying Individual) Carlos M. Alvarez, President.  
 Allen Lund Company, Inc., 4529 Angeles Crest Highway, Suite 300, La Canada, CA 91011, *Officers:* David F. Lund, Vice President (Sales and Offices), Assistant Secretary/Director, (Qualifying Individual) David A. Lund, President/Chairman of the Board.  
**Ocean Freight Forwarder—Ocean Transportation Intermediary**  
 Jamaica Worldwide Shipping Inc dba Caribeuro Shipping, 4101 Elrey Road, Orlando, FL 32808, *Officers:* Selvin Gabriel, President, (Qualifying Individual) Marline Gabriel, Vice President.  
 BNSF Logistics International, Inc., 612 E. Dallas Road, Suite 400, Grapevine, TX 76051, *Officers:* Gary M. Lancaster, Vice President/General Manager, (Qualifying Individual) James Gallegos, Secretary.  
 A.W.L.I. Group, Inc. dba Amber Worldwide Logistics, 147–60 175th Street, Jamaica, NY 11434, *Officers:* Elaine Rosendorf, President, (Qualifying Individual) Keith Milliner, Vice President.  
 Absolute Global Shipping Incorporated, 1358 Foxboro Drive, Brandon, FL 33511. *Officer:* Tracy L. Wayne, President/Secretary, (Qualifying Individual).  
 Barthco International, Inc. dba OHL International, 5101 S. Broad Street, Philadelphia, PA 19112. *Officers:* Robert Stewart, Vice President, (Qualifying Individual) Scott McWilliams, CEO.

Dated: April 9, 2010.  
**Karen V. Gregory,**  
*Secretary.*  
 [FR Doc. 2010–8546 Filed 4–13–10; 8:45 am]  
**BILLING CODE 6730–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Meeting of the Presidential Advisory Council on HIV/AIDS

**AGENCY:** Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science.

**ACTION:** Notice.

**SUMMARY:** As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Service (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. The meeting will be open to the public.

**DATES:** The meeting will be held on Monday, April 26, 2010 from 10 a.m. to approximately 4 p.m. The meeting will be open to the public.

**ADDRESSES:** The White House, South West Auditorium, Eisenhower Executive Office Building, State Avenue and 17th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Melvin Joppy, Committee Manager, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, 200 Independence Avenue, SW., Room 443H, Hubert H. Humphrey Building, Washington, DC 20201; (202) 690–5560. More detailed information about PACHA can be obtained by accessing the Council's Web site at <http://www.pacha.gov>.

**SUPPLEMENTARY INFORMATION:** PACHA was established by Executive Order 12963, dated June 14, 1995 as amended by Executive Order 13009, dated June 14, 1996. The Council was established to provide advice, information, and recommendations to the Secretary regarding programs and policies intended to (a) Promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the Secretary of Health and Human Services.

The agenda for this Council meeting will be posted on the Council's website <http://www.pacha.gov>.

This meeting of the PACHA will be on White House property, thus, each person must be screened and cleared by the U.S. Secret Service. Pre-registration

for public attendance is mandatory. Please contact: Natalie Pojman, Office of National AIDS Policy (202) 456–4533 or [npojman@who.eop.gov](mailto:npojman@who.eop.gov). Members of the public will be accommodated on a first come first served basis as meeting room space is limited. Ms. Pojman will need your full name, social security number, date of birth, residency, and country of origin to process public access attendance. Pre-registration must be submitted by close of business Thursday, April 22, 2010.

Members of the public will have the opportunity to provide comments at the meeting. If you plan to make a public comment you must pre-register with Natalie Pojman, Office of National AIDS Policy. Public comments will be limited to two minutes per speaker. Any members of the public who wish to have printed material distributed to PACHA members for discussion at the meeting should submit, at a minimum, 30 copies of the materials to the Committee Manager, PACHA, no later than close of business April 22, 2010. Contact information for the PACHA Committee Manager is listed above. Justification for filing notice less than 15 days prior to meeting: PACHA meetings are scheduled to be held in coordination with the White House Office of National AIDS Policy (ONAP), which partners with the HHS Office of HIV/AIDS Policy to provide management oversight for the Council's activities. Meeting dates are selected in consideration of the availability of meeting space and ONAP staff attendance. The designated date was recently identified because both the desired meeting site and ONAP staff are available.

Dated: April 8, 2010.  
**Christopher Bates,**  
*Executive Director, Presidential Advisory Council on HIV/AIDS.*

[FR Doc. 2010–8548 Filed 4–13–10; 8:45 am]  
**BILLING CODE 4150–43–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

[60Day–10–0733]

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and



Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404-639-5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS-D74, Atlanta, GA 30333 or send an e-mail to [omb@cdc.gov](mailto:omb@cdc.gov).

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

#### Proposed Project

CDC Early Hearing Detection and Intervention Hearing Screening and Follow-up Survey, (OMB #0920-0733 exp. 10/31/2009)—Reinstatement with

changes—National Center on Birth Defects and Developmental Disabilities (NCBDDD), Centers for Disease Control and Prevention (CDC).

#### Background and Brief Description

The National Center on Birth Defects and Developmental Disabilities at CDC promotes the health of babies, children, and adults with disabilities. As part of these efforts the Center is actively involved in addressing hearing loss (HL) among newborns and infants. HL is a common birth defect that affects approximately 12,000 infants each year and, when left undetected, can result in developmental delays. As awareness about infant HL increases, so does the demand for accurate information about rates of screening, referral, loss to follow-up, and incidence. This information is important for helping to ensure infants and children are receiving recommended screening and follow-up services, documenting the occurrence and etiology of differing degrees of HL among infants, and determining the overall impact of infant HL on future outcomes, such as cognitive development, and family dynamics. These data will also assist state Early Hearing Detection and Intervention (EHDI) programs with quality improvement activities and provide information that will be helpful

in assessing the impact of federal initiatives. The public will be able to access this information via the CDC EHDI Web site (<http://www.cdc.gov/ncbddd/ehdi/data.htm>).

Given the lack of a standardized and readily accessible source of data, the CDC EHDI program developed a survey to be used annually that utilizes uniform definitions to collect aggregate, standardized EHDI data from states and territories. The request to complete this survey is planned to be disseminated to respondents via an e-mail, which will include a summary of the request and other relevant information. Minor changes to this survey, based on respondent feedback, are planned in order to make the survey easier to complete and further improve data quality. These changes include splitting the previously combined questions about the number of infants that died and parents refused into two separate questions, adding a question about how many infants with hearing loss are receiving only monitoring services, simplifying the table for reporting type and severity of hearing loss data, and expanding the maternal race categories in the demographic section.

There are no costs to the respondents other than their time.

#### ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
State and territory EHDI Program Coordinators: Those who review survey instructions .....	57	1	10/60	10
State and territory EHDI Program Coordinators: Those who complete the survey .....	50	1	4	200

Dated: April 7, 2010.

**Maryam I. Daneshvar,**

*Acting Reports Clearance Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2010-8480 Filed 4-13-10; 8:45 am]

**BILLING CODE 4163-18-P**

#### DEPARTMENT OF HEALTH AND HUMAN SERVICES

##### Administration on Aging

##### Agency Information Collection Activities; Submission for OMB Review; Comment Request; State Program Report

**AGENCY:** Administration on Aging, HHS.

**ACTION:** Notice.

**SUMMARY:** The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by May 14, 2010.

**ADDRESSES:** Submit written comments on the collection of information by fax 202.395.6974 to the OMB Desk Officer for AoA, Office of Information and Regulatory Affairs, OMB.

**FOR FURTHER INFORMATION CONTACT:** Valerie Cook at 202-357-3583

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed

collection of information to OMB for review and clearance.

The Older Americans Act (OAA) requires annual program performance reports from States. In compliance with this OAA provision, AoA developed a State Program Report (SPR) in 1996 as part of its National Aging Program Information System (NAPIS). The SPR collects information about how State Agencies on Aging expend their OAA funds as well as funding from other sources for OAA authorized supportive services. The SPR also collects information on the demographic and functional status of the recipients, and is a key source for AoA performance measurement. This collection includes minor revisions of the format from the 2006 approved version. The proposed revised version will be in effect for the



FY 2011 reporting year and thereafter, while the current reporting, OMB Approval Number 0985-0008, will be extended to the end of the FY 2010 reporting cycle. The proposed FY 2011 version may be found on the AoA web site link entitled Proposed SPR for Review available at [http://www.aoa.gov/AoARoot/Program\\_Results/docs/SPR-Draft\\_form\\_2010\\_draft.pdf](http://www.aoa.gov/AoARoot/Program_Results/docs/SPR-Draft_form_2010_draft.pdf).

AoA estimates the burden of this collection of information as follows: 2,828 hours

Dated: April 8, 2010.

**Kathy Greenlee,**

*Assistant Secretary for Aging.*

[FR Doc. 2010-8482 Filed 4-13-10; 8:45 am]

**BILLING CODE 4154-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2010-N-0180]

#### Agency Information Collection Activities; Proposed Collection; Comment Request; Adoption of the FDA Food Code by Local, State, and Tribal Governments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's collection of information from local, State, and tribal governmental agencies concerning their adoption of, or plans to adopt, all or portions of the FDA Food Code or its equivalent by regulation, law, or ordinance.

**DATES:** Submit written or electronic comments on the collection of information by June 14, 2010.

**ADDRESSES:** Submit electronic comments on the collection of information to <http://www.regulations.gov>.

Submit written comments on the collection of

information to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

#### FOR FURTHER INFORMATION CONTACT:

Denver Presley, Jr., Office of Information Management, Food and Drug Administration, 1350 Piccard Dr., PI50-400B, Rockville, MD 20850, 301-796-3793.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

#### Adoption of the FDA Food Code by Local, State, and Tribal Governments—42 U.S.C. 243 (a); (OMB Control Number 0910-0448)—Extension

FDA has developed its model Food Code to assist and promote consistent

implementation of national food safety regulatory policy among the local, State, and tribal governmental agencies that have primary responsibility for the regulation or oversight of retail level food operations. The FDA Food Code provides a scientifically sound technical and legal basis for regulating the retail segment of the food industry. Authority for providing such assistance is derived from section 311(a) of the Public Health Service Act (42 U.S.C. 243(a)). Under 31 U.S.C. 1535, FDA provides assistance to other Federal agencies such as the Indian Health Service (IHS).

Nationwide adoption of the model FDA Food Code is an important step toward the agency's goal for consistent, scientifically sound, and risk-based food safety standards and practices. A current, comprehensive, and accurate inventory of food code adoptions by States and U.S. territories, local, and tribal governments is necessary to determine the status of up-to-date protection of the U.S. population and to identify areas where assistance to these governments may promote the adoption of regulations based on the FDA Food Code.

This collection effort, which began in 2001, has had remarkable success with 97 percent participation from State and territorial governmental agencies. FDA contracted with the Association of Food and Drug Officials (AFDO) to conduct the initial survey using the OMB approved survey form. The rulemaking process that local, State, territorial, and tribal governmental agencies must follow to adopt the model FDA Food Code is often a long and complicated process that can extend for several years. For this reason, many agencies have reported that they are still in the rulemaking process to adopt or update their food codes. Thus, FDA believes that extension of OMB approval of the survey is needed in order to keep the current database accurate and up-to-date. The contractor will collect the information electronically and/or telephonically and will be able to provide respondents with previous survey responses already in the database.

#### Description of Respondents:

Respondents to this information collection are States and U.S. territories, local, and tribal governmental agencies.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN<sup>1</sup>

Food Code Survey	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Respondents	75	4	300	1	300

<sup>1</sup> There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on FDA's experience and the number of updates received in the past 3 years. FDA estimates that 75 respondents will provide four quarterly updates each, resulting in an estimated 300 total annual responses. The agency estimates that each quarterly update will take about 1 hour. Of the 75 respondents, those who amend their regulations with changes unrelated to the risk factors and interventions, and those who are not adopting model FDA Food Code provisions, but are incorporating certain Conference for Food Protection recommendations only, will likely need only annual contact.

Dated: April 9, 2010.

**Leslie Kux,**

*Acting Assistant Commissioner for Policy.*

[FR Doc. 2010-8510 Filed 4-13-10; 8:45 am]

**BILLING CODE 4160-01-S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2009-E-0413]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; AFINITOR

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for AFINITOR and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration,

10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993-0002, 301-796-3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product AFINITOR (everolimus). AFINITOR is indicated for treatment of patients with advanced renal cell carcinoma after failure of treatment with sunitinib or sorafenib. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for AFINITOR (U.S. Patent No. 5,665,772) from Novartis AG, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 2, 2009, FDA

advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of AFINITOR represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AFINITOR is 4,486 days. Of this time, 4,212 days occurred during the testing phase of the regulatory review period, while 274 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* December 19, 1996. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 19, 1996.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* June 30, 2008. FDA has verified the applicant's claim that the new drug application (NDA) 22-334 was submitted on June 30, 2008.

3. *The date the application was approved:* March 30, 2009. FDA has verified the applicant's claim that NDA 22-334 was approved on March 30, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 14, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 12, 2010. To meet its burden,

the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 22, 2010.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 2010–8443 Filed 4–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket Nos. FDA–2009–E–0230 and FDA–2009–E–0231]

#### Determination of Regulatory Review Period for Purposes of Patent Extension; SAVELLA

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) has determined the regulatory review period for SAVELLA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of patents which claim that human drug product.

**ADDRESSES:** Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6222, Silver Spring, MD 20993–0002, 301–796–3602.

**SUPPLEMENTARY INFORMATION:** The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and

Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product SAVELLA (milnacipran hydrochloride). SAVELLA is indicated for the management of fibromyalgia. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for SAVELLA (U.S. Patent Nos. 6,602,911 and 6,992,110) from Cypress Bioscience, Inc., and the Patent and Trademark Office requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 29, 2009, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of SAVELLA represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for SAVELLA is 2,571 days. Of this time, 2,177 days occurred during the testing phase of the regulatory review period, while 394 days occurred during the

approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* January 2, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 2, 2002.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* December 18, 2007. FDA has verified the applicant's claim that the new drug application (NDA) 22–256 was submitted on December 18, 2007.

3. *The date the application was approved:* January 14, 2009. FDA has verified the applicant's claim that NDA 22–256 was approved on January 14, 2009.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 435 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 14, 2010. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 12, 2010. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 22, 2010.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 2010–8518 Filed 4–13–10; 8:45 am]

**BILLING CODE 4160–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, *In Vitro* Assessments for Antimicrobial Activity—Bacteria and Fungi.

*Date:* May 5, 2010.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

*Contact Person:* Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, Bethesda, MD 20892–7616. 301–443–8115. [gaol2@niaid.nih.gov](mailto:gaol2@niaid.nih.gov).

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, “*In Vitro* Assessments for Antimicrobial Activity—Central Data Management Center.”

*Date:* May 12, 2010.

*Time:* 12 p.m. to 3 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.

*Contact Person:* Yong Gao, PhD, Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 3246, 6700B Rockledge Drive, Bethesda, MD 20892–7616. 301–443–8115. [gaol2@niaid.nih.gov](mailto:gaol2@niaid.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 6, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–8462 Filed 4–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel SARS–CoV–Host Cell Interactions and Vaccine Development.

*Date:* May 7, 2010.

*Time:* 11 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)

*Contact Person:* Eleazar Cohen, PhD, Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700 B Rockledge Drive, Room 3129, Bethesda, MD 20892, 301–435–3564, [ec17w@nih.gov](mailto:ec17w@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 6, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–8463 Filed 4–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Diabetes and Metabolism.

*Date:* May 5–6, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, [knechtm@csr.nih.gov](mailto:knechtm@csr.nih.gov).

*Name of Committee:* Healthcare Delivery and Methodologies, Community-Level Health Promotion Study Section.

*Date:* May 17–18, 2010.

*Time:* 8:30 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Sand Key Hotel, 1160 Gulf Boulevard, Clearwater Beach, FL 33767.

*Contact Person:* Jacinta Bronte-Tinkew, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3164, MSC 7770, Bethesda, MD 20892, (301) 435–1503, [brontetinkewjm@csr.nih.gov](mailto:brontetinkewjm@csr.nih.gov).

*Name of Committee:* Center for Scientific Review Special Emphasis Panel, Member Conflict: Cell Biology.

*Date:* May 19–20, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Virtual Meeting).

*Contact Person:* Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, [ariasj@csr.nih.gov](mailto:ariasj@csr.nih.gov).

*Name of Committee:* Oncology 2—Translational Clinical Integrated Review Group, Radiation Therapeutics and Biology Study Section.

*Date:* May 24–25, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bahia Resort Hotel, 998 West Mission Bay Drive, San Diego, CA 92109.

*Contact Person:* Bo Hong, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–435–5879, [hongb@csr.nih.gov](mailto:hongb@csr.nih.gov).

*Name of Committee:* Cell Biology Integrated Review Group, Molecular and

# Integrative Signal Transduction Study Section.

*Date:* May 25–26, 2010.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Palomar, 2121 P Street, NW., Washington, DC 20037.

*Contact Person:* Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MSC 7840, Bethesda, MD 20892, (301) 402–8228, [rayam@csr.nih.gov](mailto:rayam@csr.nih.gov).

*Name of Committee:* Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Biochemistry and Biophysics of Membranes Study Section.

*Date:* May 26–27, 2010.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

*Contact Person:* Nuria E. Assa-Munt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4164, MSC 7806, Bethesda, MD 20892, (301) 451–1323, [assamunu@csr.nih.gov](mailto:assamunu@csr.nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 6, 2010.

**Jennifer Spaeth,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 2010–8464 Filed 4–13–10; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Request for Comment on Minimum Requirements for Criteria in Fiscal Year 2011 Grant Applications Under the National All Schedules Prescription Electronic Reporting Act of 2005 (NASPER)

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**SUMMARY:** This notice is to request comments from interested parties regarding criteria for grants issued under NASPER (42 U.S.C. 280g–3). NASPER establishes a formula grant program for States to establish or improve State controlled substance monitoring systems (“prescription monitoring programs,” or “PMPs”). Under NASPER, the Secretary will award grants to qualifying States, defined in the legislation as the 50 States and the District of Columbia (42

U.S.C. 280g–3(m)(8)). This notice is required under NASPER and comments received in response to this notice will be evaluated and as appropriate, included in public announcements for grants under this law.

SAMHSA will be issuing a Request for Applications (RFA) for formula grant awards under the NASPER program in Federal fiscal year (FFY) 2010.

**Authority:** Section 399O, of the Public Health Service Act, as amended.

**DATES:** The closing date to submit comments will be May 14, 2010. The Administrator believes that this limited comment period is necessary and justified to comply with the timelines necessary to announce, submit, review and award grants before the end of the fiscal year, September 30, 2010.

**ADDRESSES:** To assure proper handling of comments, please reference “Docket No. CSAT 003” on all written and electronic correspondence. Written comments may be submitted to the Division of Pharmacologic Therapies, Center for Substance Abuse Treatment, 1 Choke Cherry Road, Room 2–1084, Rockville, MD 20857; Attention: DPT Federal Register Representative. Alternatively, comments may be submitted directly to SAMHSA by sending an electronic message to [dpt\\_interimrule@samhsa.hhs.gov](mailto:dpt_interimrule@samhsa.hhs.gov). Comments may also be sent electronically through <http://www.regulations.gov> using the electronic comment form provided on that site. An electronic copy of this document is also available at the <http://www.regulation.gov> Web site. SAMHSA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. SAMHSA will not accept any file formats other than those specifically listed here.

Please note that SAMHSA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes and <http://www.regulations.gov> will not accept comments after midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

**Posting of Public Comments:** Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov> and in the SAMHSA public docket. Such information includes personal

identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase “Personal Identifying Information” in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase “Confidential Business Information” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted Online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the SAMHSA’s public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Fan, Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies, SAMHSA, 1 Choke Cherry Road, Room 2–1084, Rockville, MD 20857, (240) 276–1759, e-mail: [Jennifer.Fan@samhsa.hhs.gov](mailto:Jennifer.Fan@samhsa.hhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The National All Schedules Prescription Electronic Reporting Act of 2005, (“NASPER” Pub. L. 109–60) enacted August 11, 2005, created a formula grant program under the authority of the Secretary for Health and Human Services (“the Secretary”) for State controlled substance monitoring systems (“prescription monitoring programs,” hereinafter, “PMPs”). The intent of this law is to foster the

establishment or enhancement of State-administered controlled substance monitoring systems in order to ensure that health care providers and law enforcement officials and other regulatory bodies have access to accurate, timely prescription history information as permitted by law. In addition, the expansion and establishment of prescription monitoring systems has the potential for assisting in the early identification of patients at risk for addiction. Although NASPER was authorized in 2005, an appropriation to fund the Federal grant program was not available until March 2009. Subsequently, the Consolidated Appropriations Act of 2010 appropriated \$2 million to SAMHSA for the NASPER program.

According to the Alliance of States with Prescription Monitoring Programs (Alliance), as of February 2010, 35 States have operational PMPs. An additional 5 States have enacted legislation and 2 States have pending legislation to start a PMP. Although there is considerable variation, the programs essentially require that pharmacies, physicians, or both, submit information on prescriptions dispensed for certain controlled substances as mandated by State law. Prescriber and patient information relating to prescriptions issued for controlled stimulants, sedatives/depressants, anxiolytics, narcotics, etc., is transmitted to a central office within each State.

NASPER established the authority for a grant program with the Secretary, HHS, wherein a State may submit an application to implement a new controlled substance prescription monitoring system, or to make improvements upon an existing State controlled substance monitoring system. In addition, the legislation includes provisions for standardization that will enable and require the sharing of information between States with programs.

To be eligible to receive a grant under NASPER, the State must demonstrate that the State has enacted legislation or regulations to permit the implementation of the State controlled substance monitoring program and the imposition of appropriate penalties for the unauthorized use and disclosure of information maintained in such program. Additional requirements for applications are set forth under 42 U.S.C. 280g-3(c), and include budget cost estimates, interoperability standards, uniform electronic formats, access to information, penalties for unauthorized disclosures and other issues. SAMHSA will issue a formal

request for applications in the next several weeks that will specify State application requirements for 2010 funding.

The field of electronic patient health records is dynamic. The Administrator understands that there are several initiatives being conducted by the Office of the National Coordinator for Health Information Technology (ONC) under the Health Information Technology for Economic and Clinical Health Act (HITECH Act) of 2009. ONC supports the coordination of nationwide efforts to implement and use the most advanced health information technology and electronic exchange of health information such as the use of electronic health records (EHR). The ONC initiative is complemented by a grant program funded by the American Recovery and Reinvestment Act (ARRA) that accelerates the development and utilization of standardized EHR systems. In addition, the Drug Enforcement Administration (DEA) issued a notice of proposed rulemaking that, if finalized, would permit electronic prescribing of the controlled substances that are subject to PMPs, 73 FR 36722 (27 June 2008).<sup>1</sup> The Administrator believes that the future changes in health information technology and EHRs will have a significant impact on PMPs.

SAMHSA is currently involved in discussion with the Department of Health and Human Services (HHS) on Health Information Technology (HIT) and will monitor the implication for PMPs.

## II. Request for Comments

Before awarding grants to States under NASPER, the Secretary is required, after consulting with States and other interested parties, to seek public comment on proposed minimum requirements. Under 42 U.S.C. 280g-3(b), the criteria to be used by States relate to the following four purposes:

1. Criteria for security for information handling and for the database maintained by the State under subsection (e) generally including efforts to use appropriate encryption technology or other appropriate technology to protect the security of such information (42 U.S.C. 280g-3(c)(1)(A)(ii));

2. Criteria for availability of information and limitation on access to program personnel (42 U.S.C. 280g-3(c)(1)(A)(v));

3. Criteria for access to the database, and procedures to ensure that

information in the database is accurate (42 U.S.C. 280g-3(c)(1)(A)(vi));

4. Criteria for the use and disclosure of information, including a description of the certification process to be applied to requests for information under subsection (f) (42 U.S.C. 280g-3(c)(1)(A)(vii)).

In a **Federal Register** notice published April 29, 2009, 74 FR 81 (29 April 2009), SAMSHA proposed minimum standards in accordance with NASPER.<sup>2</sup> SAMHSA received several comments in response to that notice. These comments, the 2009 Request for Application (RFA), as well as a document that summarizes how the comments were addressed can be viewed by searching “HHH-OS-2009-0006” at the <http://www.regulations.gov> website. The comments were considered and reflected in the 2009 RFA. SAMHSA received and funded 13 grants to States in 2009. The minimum standards contained in the 2009 RFA remain in effect unless specifically modified as a result of this current process.

### A. Consultation With States and Other Interested Parties

Prescription monitoring programs (“PMPs”) have been in place for decades. In addition, the Federal Government has supported the development, enhancement, and expansion of these State programs for several years under the “Harold Rogers Prescription Drug Monitoring Grant Program,” which is administered by the Department of Justice, Bureau of Justice Assistance (DOJ/BJA). Since FY 2003, BJA has provided training and technical assistance to grantees and to States which are planning to implement a program. BJA training and technical assistance partners have included the National Alliance for Model State Drug Laws, the IJIS Institute, the National Conference of State Legislatures, the Addiction Technology Transfer Center, Brandeis University, and the Alliance of States with Prescription Drug Monitoring Programs.

In developing these revisions to the minimum standards, SAMHSA has consulted with DOJ/BJA and the Alliance of States with Prescription Drug Monitoring Programs to obtain information about their experience with PMP operating requirements. In addition, SAMHSA has discussed NASPER provisions with individual States with PMPs, and entities such as

<sup>1</sup>“Electronic Prescriptions for Controlled Substances, Proposed Rule.” **Federal Register** 73:125 (27 June 2008) p. 36722.

<sup>2</sup>“Request for Comment on Minimum Requirements for Criteria in Grant Applications Under the National All Schedules Prescription Electronic Reporting Act of 2005 (NASPER).” **Federal Register** 74:81 (29 April 2009) p. 19566.

the Institute of Justice Information Systems, which have provided technical assistance to State PMPs on interstate information sharing. SAMHSA has also reviewed the Model State PMP law, the Harold Rogers Grant Program grant solicitations as well as numerous reports, survey results, and published articles. SAMHSA believes that taken together, the approach outlined above provides a sufficient level of consultation for the minimum requirements proposed for comment in this notice.

In addition from these consultations, SAMHSA understands that standards are not uniform from State to State. However, while some States have, or will adopt the minimum standards proposed in the notice, other States will consider the need to modify their systems substantially in order to conform with the new standards.

#### *B. Proposed Minimum Requirements*

Overall, the Administrator's intent in proposing the minimum standards below is to facilitate the stated goals of NASPER—to foster establishment of PMPs that provide timely information to health care providers and others, and, over time, to guide the improvement of PMPs with best practices.

1. Criteria for security for information handling and for the database maintained by the State under subsection (e) generally including efforts to use appropriate encryption technology or other appropriate technology to protect the security of such information (42 U.S.C. 280g–3(c)(1)(A)(ii)).

State PMPs include personal patient health information on individuals who receive and fill controlled substance prescriptions as well as those who have had a controlled substance dispensed to them beyond a 48-hour supply. In addition, PMPs need to collect identification information on prescribers and dispensers. Finally, the systems need to collect information that identifies the types and quantities of the prescribed/dispensed substances. The information collection requirements under NASPER are set forth under 42 U.S.C. 280g–3(d)(3)(A)–(J).

The Administrator is not proposing any new minimum standards for security under this system. The standards have not changed from those incorporated into the Fiscal Year 2009 RFA. To summarize, information from PMPs must be stored and protected in an electronic manner that, at a minimum, is at least equivalent to the standards set forth in regulations promulgated under section 262 of the Health Insurance Portability and

Accountability Act of 1996 (Pub. L. 104–191; 110 Stat. 2033). This would include the technical safeguards standards of the HIPAA Security Rule under 45 CFR 164.312. “Technical safeguards” is defined at 45 CFR 164.304 as, “the technology and the policy and procedures for its use that protect electronic protected health information and control access to it.” These HIPAA security regulations include technical safeguards for access control, audit controls, integrity, person or entity authentication, and transmission security. The access control standards require, at a minimum, unique user identification, and an emergency access procedure, with automatic logoff and encryption/decryption as addressable implementation specifications.

In addition, NASPER does not supersede the requirements of the Federal substance abuse confidentiality law (42 U.S.C. 290dd–2) and regulations under 42 CFR part 2.

2. Criteria for availability of information and limitation on access to program personnel (42 U.S.C. 280g–3(c)(1)(A)(v)).

For the purposes of organization, the Administrator will address “criteria for availability of information” under section four, below. “Limitation on access to program personnel” will be interpreted for the purposes of this notice to mean limiting access to individuals within the State PMP program to the PMP database and the PMP data itself.

The Administrator is not proposing any new minimum standards under this section.

3. Criteria for access to the database, and procedures to ensure that information in the database is accurate (42 U.S.C. 280g–3(c)(1)(A)(vi)).

For the purposes of organization, the Administrator will address “criteria for access to the database” under section four, and the revised minimum standards here (section 3) relating to procedures to ensure that information in the database is accurate.

Based upon consultations with States and other entities, the Administrator believes that the procedures applied by PMPs to ensure accuracy have evolved over the years. Indeed, electronic PMPs rely on much of the same technology for transmission of prescription drug data as that used by the private and public insurance systems. As such, these electronic data transmission switches have evolved procedures and safeguards to help assure that the information is accurate for reimbursement purposes.

From the 2009 RFA, existing PMPs must adopt the 1995 or higher version of the American Society for Automation

in Pharmacy (ASAP) standard for electronic prescription formatting to ensure the accuracy of the information in the PMP database, while PMPs that are being established and implemented must adopt the most current ASAP version (*i.e.*, ASAP 2007). However, the Administrator proposes for comment the following new minimum requirements for accuracy. Existing PMPs must adopt the 2007 version of the ASAP standard for electronic prescription formatting by September 30, 2011. The Administrator believes the adoption of the minimum will help ensure that gross formatting errors in identification numbers, NDC codes, etc., are minimized. In addition, using the most recent version of the ASAP standard may enhance the potential for increased State-to-State interoperability, the potential to collect information on cash purchases, and the potential for “real time” reporting.

4. Criteria for the use and disclosure of information, including a description of the certification process to be applied to requests for information under subsection (f) (42 U.S.C. 280g–3(c)(1)(A)(vii)).

The intent of this provision is to limit the disclosure of information from a State PMP to that necessary for public health and law enforcement purposes. NASPER envisions two types of disclosures from PMPs—solicited disclosures and unsolicited disclosures.

Solicited Disclosure of Information from PMP. Under 42 U.S.C. 280g–3(f)(1), a State may disclose information from the PMP only in response to a request (“a solicited request”) from any of five entities: (a) A practitioner (or the agent thereof), (b) any local, State, or Federal law enforcement, narcotics control, licensure, disciplinary, or program authority, (c) the controlled substance monitoring program of another State or group of States with whom the State has established an interoperability agreement, (d) any agent of the Department of Health and Human Services, a State Medicaid program, a State health department, or the Drug Enforcement Administration, and (e) an agent of the State agency or entity of another State that is responsible for the establishment and maintenance of that State's controlled substance monitoring program. The Administrator views solicited requests for information as a two component process. First, the individual or entity requesting information from the PMP must be authorized (“authentication”) to receive the information. Next, the authorized individual or entity must provide a need (“certification”) for the requested information.



The Administrator is proposing minimum authentication and certification requirements for solicited disclosures from PMPs for the five entities listed in NASPER. These authentication requirements are proposed to bring PMPs into compliance with National Institute of Standards and Technology (NIST) 800–63.

(a) A practitioner or dispenser (pharmacist) must submit a hard copy written, signed, and notarized request every three years to the designated State agency, which in turn, verifies the information before providing a username and password to the practitioner. The request must include the practitioner's name and date of birth, a corresponding DEA registration number, and State medical license number. In soliciting information from the State PMP database, the practitioner must certify that the requested information is for the purpose of providing medical or pharmaceutical treatment or evaluating the need for such treatment to a bona fide current patient. Such requests/certifications can be conducted by web-based procedures. In the 2009 RFA, States have until September 30, 2010 to apply this minimum requirement. This minimum requirement procedure must now be utilized by States at the time of funding. States, or their agents, must comply with level 2 authority verification and authorization mechanism level 2 as set forth in the NIST Electronic Authentication Guideline of April 2006.<sup>3</sup>

In addition, the Administrator recognizes that a number of States allow prescribers to enlist the assistance of agents who can retrieve patient information on behalf of the prescriber. The Administrator proposes the authorization of one PMP subaccount per prescriber, if permitted by State law. The dispenser would not be permitted to obtain subaccounts.

(b) The Administrator is not proposing any new minimum standards under this section with respect to local, State, or Federal law enforcement, narcotics control, licensure, disciplinary, or program authorities.

(c) The Administrator is not proposing any new minimum standards under this section with respect to the controlled substance monitoring program of another State or a group of States.

(d) The Administrator is not proposing any new minimum standards under this section with respect to any agent of the Department of Health and Human Services, a State Medicaid program, a State health department, or the Drug Enforcement Administration.

(e) The Administrator is not proposing any new minimum standards under this section with respect to an agent of the State agency or entity of another State that is responsible for the establishment and maintenance of the State's controlled substance monitoring program.

*Patients:* The Administrator is not proposing any new minimum standards under this section.

Unsolicited Disclosures of Information from PMPs. Practitioners and Dispensers. Under 42 U.S.C. 280g–3(f)(2)(A), NASPER requires that “[I]n consultation with practitioners, dispensers, and other relevant and interested stakeholders, a State receiving a grant under subsection (a) \* \* \* shall establish a program to notify practitioners and dispensers of information that will help identify and prevent the unlawful diversion or misuse of controlled substances \* \* \*.”

The Administrator understands that notifying prescribers and dispensers when PMP activity identifies individuals who may need substance abuse treatment, or suggests drug diversion, is important to reducing substance abuse and reducing illicit distribution of controlled prescription substances.

Prescription drug abuse and prescription drug mortality continue to present a significant public health problem. A recent Centers for Disease Control and Prevention Information Brief indicates that from 1999 through 2006, the number of fatal poisonings involving opioid analgesics more than tripled from 4,000 to 13,800 deaths. That same report indicates that opioid analgesics were involved in almost 40% of all poisoning deaths in 2006.

According to SAMHSA's 2008 National Survey on Drug Use and Health (NSDUH 2008), individuals age 12 and over initiate abuse of prescription controlled substance pain relievers at approximately the same rate as marijuana. That same report indicates that 55.9% of those individuals obtain the abused prescription drug free from a friend or relative. In turn, those friends or relatives obtained the prescription controlled substance from one doctor almost 80% of the time, and from one or more doctors 3.4% of the time. Clearly, there is a need to better inform prescribing physicians on how their patients are obtaining prescription

controlled substances for potentially non-medical uses.

The inappropriate use of controlled prescription drugs is also taxing public insurance. According to the September 2009 U.S. Government Accountability Office (GAO) Report titled “Medicaid: Fraud and Abuse Related to Controlled Substances Identified in Selected States,” which looked at potential Medicaid fraud in California, Illinois, New York, North Carolina, and Texas, indicated that during fiscal years 2006 and 2007, “doctor shopping” activities involving controlled substances resulted in \$63 million in Medicaid payments, not including medical costs related to getting prescriptions.<sup>4</sup>

The GAO Report also examined the use of PMPs in reducing fraud, abuse, and diversion of controlled substances. The GAO concluded that:

For PDMPs to be useful, health care providers and pharmacies must use the data. Officials from the five selected states said that physician participation in the PDMP is not widespread and not required. In fact, one state did not have a Web-based PDMP; a health care provider has to put in a manual request to the agency to have a controlled substance report generated.

SAMHSA agrees that PMPs are most effective when prescribers have information on patients; however, prescribers do not request or receive information from PMPs with acceptable frequency.<sup>5</sup>

Some States have enacted laws that require prescribers to solicit information on patients before prescribing. The Administrator is aware that many States have established “thresholds” that trigger unsolicited notifications to prescribers and in some cases dispensers.<sup>6</sup>

In the 2009 RFA, the unsolicited notification minimum requirement was met by the State if the State established a plan and articulated a threshold for notifying practitioners and dispensers of information that will help identify and prevent unlawful diversion or misuse of controlled drugs. A threshold example

<sup>4</sup> U.S. Government Accountability Office. Medicaid: Fraud and Abuse Related to Controlled Substances Identified in Selected States, GAO–09–957. Washington, DC: Government Accountability Office, September 2009. <http://www.gao.gov/new.items/d09957.pdf> (accessed February 23, 2010).

<sup>5</sup> Tribble SJ. (2010, January 20). Ohio lawmakers want to mandate prescription monitoring by doctors. Cleveland.com [Online] January 20, 2010. [http://www.cleveland.com/healthfit/index.ssf/2010/01/lawmakers\\_want\\_to\\_mandate\\_pres.html](http://www.cleveland.com/healthfit/index.ssf/2010/01/lawmakers_want_to_mandate_pres.html) (accessed February 23, 2010).

<sup>6</sup> Katz N *et al.* Usefulness of prescription monitoring programs for surveillance—analysis of Schedule II opioid prescription data in Massachusetts, 1996–2006. *Pharmacoepidemiology and Drug Safety* 2010; 19: 115–123.

<sup>3</sup> National Institute of Standards and Technology. Electronic Authentication Guideline. [Online] April 2006. Gaithersburg, MD: NIST Special Publication 800–63 Version 1.0.2. [http://csrc.nist.gov/publications/nistpubs/800-63/SP800-63V1\\_0\\_2.pdf](http://csrc.nist.gov/publications/nistpubs/800-63/SP800-63V1_0_2.pdf) (accessed February 18, 2010).



was provided of an individual who has filled five or more controlled substance prescriptions from five different prescribers or five different dispensers in the State within a six month period. After proposing this a minimum requirement in 2009, SAMHSA did receive a comment that this threshold would create a resource burden on States. Due to this, SAMHSA considered alternative notification plans.

SAMHSA realizes that in the September 2009 GAO report, a threshold of patients using six or more physicians in a year to obtain controlled substances was used while a threshold of four or more physicians and four or more pharmacies in the span of one year was used by Katz *et al* in examining the data in Massachusetts.<sup>46</sup> In addition, CDC recommended PMPs provide "reports to providers on patients less than 65 years old if they are being treated with opioids for more than 6 weeks by two or more providers or if there are signs of inappropriate use of controlled substances."<sup>7</sup> These thresholds have not been validated; however the GAO report found that approximately 65,000 Medicaid beneficiaries in the five states investigated visited six or more doctors to acquire prescriptions for the same type of controlled substances in the selected states during fiscal years 2006 and 2007. In light of the above regarding the effectiveness of PMPs when prescribers and dispensers have access to PMP data as well as the burden on States with such disclosures, the Administrator is proposing as a minimum standard the following threshold: Any individual that has filled six or more controlled substance prescriptions from six different prescribers, or six different dispensers in the State, within a six month period shall be the subject of a report from the prescription drug monitoring program to each prescriber. This higher threshold for unsolicited reporting will reduce the burden to States from what was proposed in 2009. To further mitigate the burden to States for unsolicited reporting to prescribers, the Administrator also proposes that reports must be sent to at least ten percent of the registered prescribers in the State in one calendar year.

*Drug Diversion Investigators:* The Administrator is not proposing any new minimum standards under this section.

**Pamela S. Hyde,**

*Administrator, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 2010-8560 Filed 4-13-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2010-0231]

#### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0089.

**AGENCY:** Coast Guard, DHS.

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) and Analysis to the Office of Management and Budget (OMB) requesting an approval for re-instatement with change of the following collection of information: 1625-0089, National Recreational Boating Survey. Before submitting this ICR to OMB, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before June 14, 2010.

**ADDRESSES:** To avoid duplicate submissions to the docket [USCG-2010-0231], please use only one of the following means:

- (1) *Online:* <http://www.regulations.gov>.
- (2) *Mail:* Docket Management Facility (DMF) (M-30), U.S. Department of Transportation (DOT), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- (3) *Hand Deliver:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.
- (4) *Fax:* 202-493-2251.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m.

and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593-7101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requena, Office of Information Management, telephone 202-475-3523, or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

The Coast Guard invites comments on whether this ICR should be granted based on the collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of information subject to the collection; and (4) ways to minimize the burden of the collections on respondents, including the use of automated collection techniques or other forms of information technology.

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the "Privacy Act" paragraph below.

**Submitting comments:** If you submit a comment, please include the docket number [USCG-2010-0231], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no

<sup>7</sup> Centers for Disease Control and Prevention. CDC's Issue Brief: Unintentional Drug Poisoning in the United States. [Online] March 2010. Atlanta, GA: <http://www.cdc.gov/HomeandRecreationalSafety/pdf/poison-issue-brief.pdf> (accessed April 5, 2010).

larger than 8½ by 11 inches, suitable for copying and electronic filing.

If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and will address them accordingly.

**Viewing comments and documents:** Go to <http://www.regulations.gov> to view documents mentioned in this Notice as being available in the docket. Click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2010-0231" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the DMF in room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

### Information Collection Request

**Title:** National Recreational Boating Survey.

**OMB Control Number:** 1625-0089.

**Summary:** The Coast Guard National Recreational Boating Survey collects data on recreational boating participation and exposure to hazards. The goal is for the Office of Boating Safety to draw a general statistical profile of the U.S. recreational boating population. Of particular importance will be statistics on the type of boats used, activities associated with them, boat operators' knowledge of safety measures, and duration of a typical boating day (referred to as "exposure"). Exposure data will be used to derive a reliable measure of the risk associated with recreational boating that can be used in all jurisdictions.

**Need:** The Federal Boat Safety Act of 1971 determines the framework of the Coast Guard Recreational Boating Safety Program. This Program, as set forth in 46 U.S.C., Chapter 131, requires the Coast Guard to "encourage greater State participation and uniformity in boating safety efforts, and particularly to permit the States to assume a greater share of boating safety education, assistance, and enforcement activities." See 46 U.S.C. 13102. The Coast Guard Office of

Boating Safety achieves these goals by providing timely and relevant information on subject activities that occur in each respective jurisdiction. The boating information provided by the Coast Guard enables each State agency to tailor and implement safety initiatives addressing specific needs of boaters in local jurisdictions. The primary objective of this collection is to provide the Coast Guard with the required information in a format suitable to effectively manage the Program.

**Forms:** None.

**Respondents:** Recreational boating participants and owners of recreational vessels.

**Frequency:** Every two years.

**Burden Estimate:** This is a biennial requirement. In the year the survey is conducted, the burden is estimated to be 10,880 hours.

Dated: April 7, 2010.

**M.B. Lytle,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. 2010-8473 Filed 4-13-10; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[USCG-2009-1064]

### Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625-0087

**AGENCY:** Coast Guard, DHS.

**ACTION:** Thirty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the U.S. Coast Guard is forwarding an Information Collection Request (ICR), abstracted below, to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) requesting an extension of its approval for the following collection of information: 1625-0087, International Ice Patrol Customer Survey. Our ICR describes the information we seek to collect from the public. Review and comments by OIRA ensure we only impose paperwork burdens commensurate with our performance of duties.

**DATES:** Please submit comments on or before May 14, 2010.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2009-1064] to the Docket Management Facility (DMF) at the U.S. Department of Transportation (DOT) or to OIRA. To avoid duplication, please submit your comments by only one of the following means:

(1) Electronic submission. (a) To Coast Guard docket at <http://www.regulation.gov>. (b) To OIRA by e-mail via: [oira\\_submission@omb.eop.gov](mailto:oira_submission@omb.eop.gov).

(2) Mail or Hand delivery. (a) DMF (M-30), DOT, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001. Hand deliver between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329. (b) To OIRA, 725 17th Street, NW., Washington, DC 20503, attention Desk Officer for the Coast Guard.

(3) Fax. (a) To DMF, 202-493-2251. (b) To OIRA at 202-395-5806. To ensure your comments are received in a timely manner, mark the fax, attention Desk Officer for the Coast Guard.

The DMF maintains the public docket for this Notice. Comments and material received from the public, as well as documents mentioned in this Notice as being available in the docket, will become part of the docket and will be available for inspection or copying at room W12-140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find the docket on the Internet at <http://www.regulations.gov>.

A copy of the ICR is available through the docket on the Internet at <http://www.regulations.gov>. Additionally, copies are available from: Commandant (CG-611), Attn Paperwork Reduction Act Manager, U.S. Coast Guard, 2100 2nd St., SW., Stop 7101, Washington, DC 20593-7101.

**FOR FURTHER INFORMATION CONTACT:** Mr. Arthur Requena, Office of Information Management, telephone 202-475-3523 or fax 202-475-3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202-366-9826, for questions on the docket.

**SUPPLEMENTARY INFORMATION:** The Coast Guard invites comments on whether this ICR should be granted based on it being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance

the quality, utility, and clarity of information subject to the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments to Coast Guard or OIRA must contain the OMB Control Number of the ICR. They must also contain the docket number of this request, [USCG–2009–1064]. For your comments to OIRA to be considered, it is best if they are received on or before the May 14, 2010.

**Public participation and request for comments:** We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to <http://www.regulations.gov>. They will include any personal information you provide. We have an agreement with DOT to use their DMF. Please see the “Privacy Act” paragraph below.

**Submitting comments:** If you submit a comment, please include the docket number [USCG–2009–1064], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend you include your name, mailing address, an e-mail address, or other contact information in the body of your document so that we can contact you if we have questions regarding your submission. You may submit comments and material by electronic means, mail, fax, or delivery to the DMF at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. In response to your comments, we may revise the ICR or decide not to seek an extension of approval for this collection. The Coast Guard and OIRA will consider all comments and material received during the comment period.

**Viewing comments and documents:** Go to <http://www.regulations.gov> to view documents mentioned in this Notice as being available in the docket. Click on the “read comments” box, which will then become highlighted in blue. In the “Keyword” box insert “USCG–2009–1064” and click “Search.” Click the “Open Docket Folder” in the “Actions” column. You may also visit the DMF in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between

9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy Act:** Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act statement regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316).

#### Previous Request for Comments

This request provides a 30-day comment period required by OIRA. The Coast Guard published the 60-day notice (75 FR 1068, January 8, 2010) required by 44 U.S.C. 3506(c)(2). That Notice elicited no comments.

#### Information Collection Request

**Title:** International Ice Patrol Customer Survey.

**OMB Control Number:** 1625–0087.

**Type of Request:** Extension of a currently approved collection.

**Respondents:** Owners and operators of vessels transiting the North Atlantic.

**Abstract:** In accordance with Executive Order 12862, the U.S. Coast Guard is directed to conduct surveys (qualitative and quantitative) to determine the kind/quality of services our customers want and expect, as well as their satisfaction with USCG’s existing services. This survey will be limited to data collections soliciting strictly voluntary opinions; it will not collect required or regulated information.

**Forms:** None.

**Burden Estimate:** The estimated burden remains at 120 hours a year.

**Authority:** The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended.

Dated: April 7, 2010.

**M.B. Lytle,**

*Captain, U.S. Coast Guard, Acting Assistant Commandant for Command, Control, Communications, Computers and Information Technology.*

[FR Doc. 2010–8474 Filed 4–13–10; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

[Docket ID: FEMA–2010–0012]

#### Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0022; Community Rating System (CRS) Program—Application Worksheets and Commentary

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0022; FEMA Form 086–0–23, Community Rating System Application Form and Manual; 086–0–23A, Community Rating System Annual Recertification.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed extension, without change, of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the application for the Community Rating System program. This program allows communities to become eligible for discounts on flood insurance when the communities undertake activities to mitigate damage resulting from floods. The application documents these activities and provides the Federal Emergency Management Agency with the information necessary to determine what discounts are appropriate.

**DATES:** Comments must be submitted on or before June 14, 2010.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at <http://www.regulations.gov> under Docket ID FEMA–2010–0012. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to [FEMA-POLICY@dhs.gov](mailto:FEMA-POLICY@dhs.gov). Include Docket ID FEMA–2010–0012 in the subject line.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via a Notice link in the footer of <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Contact Bill Lesser, Program Specialist, in the Mitigation Directorate at the Federal Emergency Management Agency, (202) 646-2807 for additional information. You may contact the Office of Records Management for copies of the proposed collection of information at facsimile number (202) 646-3347 or e-mail address: [FEMA-Information-Collections@dhs.gov](mailto:FEMA-Information-Collections@dhs.gov).

**SUPPLEMENTARY INFORMATION:** The National Flood Insurance Reform Act (NFIRA) of 1994 (Pub. L. 103-325,

section 541) requires that a community rating system be established. This ratings system is a voluntary program for communities and it would provide a method by which flood mitigation activities engaged in by these communities could be measured. The effect of this mitigation activity would reduce the exposure of the communities to damages resulting from flooding and in turn reducing the loss incurred as a result of this flooding. To encourage participation, discounts on flood insurance are offered within communities that successfully complete qualified mitigation actions, and the community ratings system provides the ability to measure these actions and to recertify the communities in successive years.

**Collection of Information**

*Title:* Community Rating System (CRS) Program—Application Worksheets and Commentary.

*Type of Information Collection:* Revision of a currently approved information collection.

*OMB Number:* 1660-0022.

*Form Titles and Numbers:* FEMA Form 086-0-23, Community Rating System Application Form and Manual; 086-0-23A, Community Rating System Annual Recertification.

*Abstract:* The CRS Application Worksheet and Commentary are used by communities that participate in the National Flood Insurance Program's (NFIP) Community Rating System (CRS) to document the activities that communities have undertaken to mitigate against future flood losses. The CRS application and activity worksheets provide a step-by-step process for communities to follow in their effort to achieve the maximum amount of discount on flood insurance premiums. CRS is a voluntary program where flood insurance costs are reduced in communities that implement practices, such as building codes and public education activities, that are considered to reduce risks of flooding and promote purchase of flood insurance.

*Affected Public:* State, local, or Tribal Government.

*Estimated Total Annual Burden Hours:* 8,450.

**ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS**

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Total number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average hourly wage rate	Total annual respondent cost
State, local, or Tribal Government.	Community Rating System Application Form and Manual, FEMA Form 086-0-23.	150	1	150	31	4,650	\$48.83	\$227,060
State, local, or Tribal Government.	Community Rating System Annual Recertification, FEMA Form 086-0-23A.	950	1	950	4	3,800	48.83	185,554
Total .....	.....	1,100	.....	1,100	.....	8,450	.....	412,614

*Estimated Cost:* There are no estimated operational, maintenance, capital or start-up costs associated with this collection.

**Comments**

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and

clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: March 31, 2010.

**Larry Gray,**

*Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2010-8496 Filed 4-13-10; 8:45 am]

**BILLING CODE 9110-11-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-5383-N-08]

**Notice of Proposed Information Collection for Public Comment; Public Housing Assessment System—Management Operations Certification**

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork

Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* June 14, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048, (this is not a toll-free number) or e-mail Mr. McKinney at [Leroy.McKinneyJr@hud.gov](mailto:Leroy.McKinneyJr@hud.gov) for a copy of the proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

**FOR FURTHER INFORMATION CONTACT:** Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Public Housing Assessment System—Management Operations Certification.

*OMB Control Number:* 2535–0106.

*Description of the need for the information and proposed use:* HUD assesses all of the management operations data required under section 6(j) of the Act in a format comprising six sections or sub-indicators. The PHAS regulation requires that all management operations data be submitted electronically to HUD, in a HUD prescribed format. HUD uses the management data it collects from program participants to evaluate all major areas of a participant's management operations. The management data are evaluated using predetermined weights and factors to compute an indicator score for the management operations of each reporting entity. HUD uses this score with three other PHAS indicator scores (i.e., physical condition, financial condition and resident services) to produce an overall PHAS score for each PHA. The overall PHAS score determines if a PHA's performance is high, standard, or troubled.

*Agency form number, if applicable:* Form HUD–50072.

*Members of affected public:* PHAs, State or local government.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents:* The estimated number of respondents is an annual average of 3,174 PHAs that submit management operations certification. The average number for each PHA response varies by size of the PHA, with a total reporting burden of 3,644 hours, or an average of 1.15 hours per respondent.

*Status of the proposed information collection:* Extension of a currently approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 7, 2010.

**Merrie Nichols-Dixon,**  
*Acting Deputy Assistant, Secretary for Policy, Program and Legislative Initiatives.*

[FR Doc. 2010–8552 Filed 4–13–10; 8:45 am]

**BILLING CODE 4210–67–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5383–N–07]

### Notice of Proposed Information Collection for Public Comment for Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* June 14, 2010.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Leroy McKinney, Jr., Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Room 4178, Washington, DC 20410–5000; telephone 202.402.8048, (this is not a toll-free number) or e-mail Mr. McKinney at [Leroy.McKinneyJr@hud.gov](mailto:Leroy.McKinneyJr@hud.gov) for a copy of the proposed forms, or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll-free.)

**FOR FURTHER INFORMATION CONTACT:** Dacia Rogers, Office of Policy, Programs and Legislative Initiatives, PIH, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410; telephone 202–402–3374, (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information

technology, *e.g.*, permitting electronic submissions of responses.

This Notice also lists the following information:

*Title of Proposal:* Housing Choice Voucher (HCV) Family Self-Sufficiency (FSS) Program.

*OMB Control Number:* 2577-0178.

*Description of the Need for the Information and Proposed Use:* The FSS program, which was established in the National Affordable Housing Act of 1990, promotes the development of local strategies that coordinate the use of public housing assistance and

assistance under the Section 8 rental certificate and voucher programs (now known as the Housing Choice Voucher Program) with public and private resources to enable eligible families to achieve economic independence and self-sufficiency. Housing agencies consult with local officials to develop an Action Plan; enter into a Contract of Participation with each eligible family that opts to participate in the program; compute an escrow credit for the family; report annually to HUD on implementation of the FSS program, and complete a funding application for

the salary of an FSS program coordinator.

*Agency form numbers:* HUD-52650, HUD-52651, HUD-52652, HUD-50058, HUD-96011, HUD-2880, HUD-2994-A, HUD-2991.

*Members of the Affected Public:* Public housing agencies, State or Local Government.

*Estimation Including the Total Number of Hours Needed To Prepare the Information Collection for the Number of Respondents, Frequency of Response, and Hours of Response:*

Description of information collection	Number of respondents	Responses per year	Total annual responses	Hrs per response	Total hours
SF424 .....	750	1	750	0.75	562.5
SF LLL .....	10	1	10	0.17	1.7
HUD 2880 (OMB no. 2510-0011) .....	750	1	750	0	*0
HUD 96011 (OMB no. 2535-0118) .....	750	1	750	0	*0
HUD-2991 Certification .....	750	1	750	0	*0
HUD-2994-A (OMB no. 2535-0116) .....	750	1	750	0	*0
FSS Application, HUD-52651 .....	750	1	750	0.75	563
Affirmatively Furthering Fair Housing Statement .....	750	1	750	.5	375
Subtotal (Application) .....	750	1	750	2.17	1502.2
Action Plan .....	5	1	5	40	200
Contract of Participation .....					
HUD-52650 .....	750	10	7,500	.25	1,875
Escrow Account Credit Worksheet .....					
HUD-52652 .....	750	50	37,500	.85	31,875
Annual Report (Narrative) .....	750	1	750	1	750
HUD-50058 (OMB no. 2577-0083) .....	750	50	37,500	0	*0
Subtotal (Program Reporting/Recordkeeping) .....	750	Varies	45,755	42.1	34,700
Total .....	750	Varies	46,505	44.27	36,202.2

\*Burden hours for forms showing zero burden hours in this collection are reflected in the OMB approval number cited or do not have a reportable burden. The burden hours for this collection have not changed since the last submission to OMB.

*Status of the Proposed Information Collection:* Extension of currently approved collection.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 7, 2010.

**Merrie Nichols-Dixon,**

*Acting Deputy Assistant Secretary for Policy, Programs, and Legislative Initiatives.*

[FR Doc. 2010-8554 Filed 4-13-10; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5396-N-02]

### Notice of Web Availability: Notice of Fiscal Year (FY) 2010 Opportunity To Register and Other Important Information for Electronic Application Submission for the Sustainable Communities Planning Grant Program

**AGENCY:** Office of Sustainable Housing and Communities, HUD.

**ACTION:** Notice.

**SUMMARY:** Through this notice, HUD announces the availability on its Web site of its Notice of FY2010 Opportunity to Register and Other Important Information for Electronic Application Submission for the Sustainable Communities Planning Grant Program (Registration Notice). The Registration Notice provides important information to assist applicants for Sustainable Communities Planning Grants to better

understand the registration and electronic submission process for HUD applications made available through Grants.gov. To submit an application via Grants.gov, new users are required to complete a five-step registration process, which can take 2 to 4 weeks to complete. HUD's Registration Notice explains each step so that applicants can be prepared to submit an application once HUD publishes its Sustainable Communities Planning Grant Notice of Funding Availability (NOFA). The Registration Notice also requests that potential applicants notify HUD of their intent to submit an application no later than May 14, 2010. HUD is requesting this information to better assess the workload anticipated during the review process and plan accordingly. Finally, the Registration Notice announces that HUD received over 900 comments on its February 10, 2010, (75 FR 6689) Sustainable Communities Planning Grant Program Advance Notice and Request for

Comments, and that it, along with its federal partner agencies, is currently reviewing and analyzing the comments. As a result, HUD announces that the publication of the Sustainable Communities Planning Grant NOFA, originally scheduled for April 10, 2010, is not expected to occur before May 2010.

The Registration Notice providing this information is available on the HUD Web site at <http://www.hud.gov/offices/adm/grants/fundsavail.cfm>.

**FOR FURTHER INFORMATION CONTACT:**

Questions regarding the Registration Notice should be directed to Office of Sustainable Housing and Communities at 202-402-6045 or by email at [sustainablecommunities@hud.gov](mailto:sustainablecommunities@hud.gov). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at 800-877-8339. The NOFA Information Center is open between the hours of 10 a.m. and 6:30 p.m. eastern time, Monday through Friday, except federal holidays.

Dated: April 7, 2010.

**Shelley Poticha,**

*Director, Office of Sustainable Housing and Communities.*

[FR Doc. 2010-8432 Filed 4-13-10; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 60-Day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on an extension of a currently approved collection of information Office of Management and Budget (OMB) #1024-0033. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Public comments will be accepted on or before June 14, 2010.

**ADDRESSES:** Send comments to Michael D. Wilson, Chief, or Laurie Heupel, Outdoor Recreation Planner, State and Local Assistance Programs Division, National Park Service (2225), 1849 C

Street, NW., Washington, DC 20240-0001 or via e-mail at [michael\\_d\\_wilson@nps.gov](mailto:michael_d_wilson@nps.gov) or [laurie\\_heupel@nps.gov](mailto:laurie_heupel@nps.gov). All responses to this notice will be summarized and included in the request.

*To Request a Draft of Proposed Collection of Information Contact:* Michael D. Wilson, Chief, or Laurie Heupel, Outdoor Recreation Planner, State and Local Assistance Programs Division, National Park Service (2225), 1849 C Street, NW., Washington, DC 20240-0001 or via e-mail at [Michael\\_d\\_wilson@nps.gov](mailto:Michael_d_wilson@nps.gov) or [Laurie\\_heupel@nps.gov](mailto:Laurie_heupel@nps.gov). You are entitled to a copy of the entire ICR package free-of-charge.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1024-0033.

*Title:* Land and Water Conservation Fund Project Agreement and Amendment.

*Form:* 10-902-902a.

*Type of Request:* Extension of currently approved information collection.

*Expiration Date:* August 31, 2010.

*Abstract:* In order to receive financial assistance or to amend an existing grant, recipients must complete the Project Agreement Form. The form sets forth obligations of the State as a consequence of accepting the assistance as well as any special terms and conditions. Amendments to the terms of the grants are accomplished by completing the Amendment and Project Agreement Forms.

*Affected Public:* State Governments, DC and Territories.

*Obligation To Respond:* Required to obtain a benefit.

*Frequency of Response:* On occasion.

*Estimated total annual responses:* 450.

*Estimated average completion time per response:* .5 hour.

*Estimated annual reporting burden:* 225.

*Estimated annual non-hour cost burden:* \$7,706.25.

The NPS also is asking for comments on (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While

you can ask us in your comment to withhold your personal identifying information we cannot guarantee that we will be able to do so.

Dated: April 6, 2010.

**Cartina Miller,**

*Information Collection Clearance Officer, National Park Service.*

[FR Doc. 2010-8535 Filed 4-13-10; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 60-Day Notice of Intention To Request Clearance of Collection of Information—Opportunity for Public Comment

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice and request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the National Park Service invites public comments on an extension of a currently approved collection of information Office of Management and Budget (OMB) #1024-0032. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Public comments will be accepted on or before June 14, 2010.

**ADDRESSES:** Send comments to Michael D. Wilson, Chief, or Laurie Heupel, Outdoor Recreation Planner, State and Local Assistance Programs Division, National Park Service (2225), 1849 C Street NW., Washington, DC 20240-0001 or via e-mail at [michael\\_d\\_wilson@nps.gov](mailto:michael_d_wilson@nps.gov) or [laurie\\_heupel@nps.gov](mailto:laurie_heupel@nps.gov). All responses to this notice will be summarized and included in the request.

*To Request a Draft of Proposed Collection of Information Contact:* Michael D. Wilson, Chief, or Laurie Heupel, Outdoor Recreation Planner, State and Local Assistance Programs Division, National Park Service (2225), 1849 C Street NW., Washington, DC 20240-0001 or via e-mail at [Michael\\_d\\_wilson@nps.gov](mailto:Michael_d_wilson@nps.gov) or [Laurie\\_heupel@nps.gov](mailto:Laurie_heupel@nps.gov). You are entitled to a copy of the entire ICR package free-of-charge.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 1024-0032.

*Title:* Land and Water Conservation Fund (LWCF) Performance Report.



*Form:* None.

*Type of Request:* Extension of currently approved information collection.

*Expiration Date:* August 31, 2010.

*Abstract:* As required by OMB Circular A-102, and the LWCF Act of 1965, as amended, grantees are required to submit performance reports which describe the status of the work required under the project scope.

*Affected Public:* 56 State Governments, DC and Territories.

*Obligation To Respond:* Required to obtain a benefit.

*Frequency of Response:* On occasion.

*Estimated total annual responses:* 700.

*Estimated average completion time per response:* 5 hours.

*Estimated annual reporting burden:* 3500.

*Estimated annual non-hour cost burden:* \$119,630.

The NPS also is asking for comments on: (1) The practical utility of the information being gathered; (2) the accuracy of the burden hour estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information we cannot guarantee that we will be able to do so.

Dated: April 6, 2010.

**Cartina Miller,**

*Information Collection Clearance Officer,  
National Park Service.*

[FR Doc. 2010-8534 Filed 4-13-10; 8:45 am]

**BILLING CODE 4312-52-P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R9-IA-2010-N080] [96200-1672-0005-7E]

#### **Proposed Information Collection; OMB Control Number 1018-0144; Wildlife Without Borders—Amphibians in Decline Grant Program**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection (IC) described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this IC. This IC is scheduled to expire on September 30, 2010. We may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** To ensure that we are able to consider your comments on this IC, we must receive them by June 14, 2010.

**ADDRESSES:** Send your comments on the IC to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222-ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); or [hope\\_grey@fws.gov](mailto:hope_grey@fws.gov) (e-mail).

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this IC, contact Hope Grey by mail or e-mail (see ADDRESSES) or by telephone at (703) 358-2482.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Abstract**

In March 2010, we requested that OMB approve, on an emergency basis, our request to collect information associated with a new grant program. We asked for emergency approval because of the necessity to spend program funds this fiscal year. OMB approved our request and assigned OMB Control No. 1018-0144, which expires September 30, 2010. We are going to ask OMB to extend the approval for this information collection for 3 years.

Section 8 of the Endangered Species Act (16 U.S.C. 1531-43) authorizes the establishment of the Wildlife Without Borders-Amphibians in Decline grant program to fund projects that conserve the world's rapidly declining amphibian species. This program will support activities that address threats to frogs, toads, salamanders, newts, and caecilians that face an unprecedented threat of extinction. Funding will be made available for conservation of species with native ranges in countries with the greatest need for conservation funding.

Applicants submit proposals for funding in response to a Notice of Funding Availability that we publish on

Grants.gov and the program web page. Applications consist of:

- (1) Cover page with basic project details (FWS Form 3-2338B).
- (2) Project summary and narrative.
- (3) Letter of appropriate government endorsement.
- (4) Brief curricula vitae for key project personnel.
- (5) Complete Standard Forms 424 and 424b (non-domestic applicants do not submit the standard forms).

Applications may also include, as appropriate, a copy of the organization's Negotiated Indirect Cost Rate Agreement (NIRCA) and any additional documentation supporting the proposed project.

All assistance awards under this program have a maximum reporting requirement of a:

- (1) Mid-term report (performance report and a financial status report) due within 30 days of the conclusion of the first half of the project period, and
- (2) Final report (performance and financial status report and copies of all deliverables, photographic documentation of the project and products resulting from the project) due within 90 days of the end of the performance period.

##### **II. Data**

*OMB Control Number:* 1018-0144.

*Title:* Wildlife Without Borders—Amphibians in Decline Grant Program.

*Service Form Number(s):* 3-2338B.

*Type of Request:* Extension of a currently approved collection.

*Affected Public:* Domestic and nondomestic Federal, State, and local governments; nonprofit, nongovernmental organizations; public and private institutions of higher education; and any other organization or individual with demonstrated experience deemed necessary to carry out the proposed project.

*Respondent's Obligation:* Required to obtain or retain a benefit.

*Frequency of Collection:* Annually.



Activity	Number of annual respondents	Number of annual responses	Completion time per response	Annual burden hours
Applications .....	40	40	12 hours .....	480
Reports .....	10	20	30 hours .....	600
Totals .....	50	60	.....	1,080

### III. Request for Comments

We invite comments concerning this IC on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this IC. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 8, 2010.

**Hope Grey,**

*Information Collection Clearance Officer,  
Fish and Wildlife Service.*

[FR Doc. 2010-8513 Filed 4-13-10; 8:45 am]

**BILLING CODE 4310-55-S**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

#### Renewal of Agency Information Collection for Leases and Permits on Trust or Restricted Land; Request for Comments

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is seeking comments on renewal of Office of Management and Budget (OMB) approval for the collection of information for leases and permits on

trust and restricted land pursuant to 25 CFR part 162. The information collection is currently authorized by OMB Control Number 1076-0155, which expires August 31, 2010.

**DATES:** Interested persons are invited to submit comments on or before *June 14, 2010*.

**ADDRESSES:** You may submit comments on the information collection to Ben Burshia, Bureau of Indian Affairs, Division of Real Estate Services, Mail Stop 4639-MIB, 1849 C Street, NW., Washington, DC 20240; facsimile: (202) 208-7737; e-mail: [Ben.Burshia@bia.gov](mailto:Ben.Burshia@bia.gov).

**FOR FURTHER INFORMATION CONTACT:** Ben Burshia (202) 208-7737.

#### SUPPLEMENTARY INFORMATION:

##### I. Abstract

BIA is seeking renewal of the approval for the information collection conducted under 25 CFR 162, Leases and Permits, for the review and approval of leases and permits on land the United States holds in trust or restricted status for individual Indians and Indian tribes. This information collection allows BIA to review applications for leases and permits, modifications, and assignments and to determine:

(a) Whether or not a lease may be approved or granted;

(b) The value of each lease;

(c) The appropriate compensation to landowners; and

(d) Provisions for violations of trespass.

Approval for this collection expires August 31, 2010. There are forms associated with this collection. No third party notification or public disclosure burden is associated with this collection. There is no change to the approved burden hours for this information collection.

##### II. Request for Comments

The BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of

the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.-5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

##### III. Data

*OMB Control Number:* 1076-0155.

*Title:* Leases and Permits, 25 CFR 162.

*Brief Description of Collection:* This collection of information is being renewed with substantially no change. Generally trust and restricted land may be leased by Indian land owners, with the approval of the Secretary of the Interior, except when specified by statute. Submission of this information allows BIA to review applications for obtaining, modifying and assigning leases and permits of land that the United States holds in trust or restricted status for individual Indians and Indian tribes. The information is used to determine approval of a lease, amendment, assignment, sublease, mortgage or related document. Standard forms are used for the application, modification, and assignment of leases and permits. Response is required to obtain a benefit.

*Type of Review:* Extension without change of a currently approved collection.

*Respondents:* Individual Indians and Indian tribes seeking to lease their trust or restricted land.

*Number of Respondents:* 14,500.  
*Total Number of Responses:* 121,140.  
*Frequency of Response:* One approval per lease, other collections occur fewer than once per lease, on average, upon request for modification or assignment or upon a trespass violation.

*Estimated Time Per Response:* Ranges from 15 minutes to 3 hours.

*Estimated Total Annual Burden:* 106,065 hours.

*Total Annual Fees From Respondents:* BIA collects fees for processing submitted documents, as set forth in section 162.241 or section 162.616. The minimum administrative fee is \$10.00 and the maximum administrative fee is \$500.00. The average total administrative fees collected is \$250.00 of which is collected approximately 7,252 times, totaling \$1,813,000.

Dated: April 6, 2010.

**Alvin Foster,**

*Acting Chief Information Officer—Indian Affairs.*

[FR Doc. 2010–8566 Filed 4–13–10; 8:45 am]

**BILLING CODE 4310–W7–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### Availability of a Final Environmental Impact Statement for the General Management Plan (FEIS/GMP), Tuskegee Airmen National Historic Site

**AGENCY:** National Park Service.

**ACTION:** Notice of availability of a Final Environmental Impact Statement for the General Management Plan (FEIS/GMP), Tuskegee Airmen National Historic Site.

**SUMMARY:** Pursuant to 42 U.S.C. 4332(2)(C) of the National Environmental Policy Act of 1969 and National Park Service (NPS) policy in Director's Order Number 2 (Park Planning) and Director's Order Number 12 (Conservation Planning, Environmental Impact Analysis, and Decision-making) the NPS announces the availability of a FEIS/GMP for the Tuskegee Airmen National Historic Site, Tuskegee, Alabama. The document provides a framework for management, use, and development options for the historic site by the NPS for the next 15 to 20 years. It describes and analyzes five management alternatives for consideration, including a No-Action Alternative.

Alternative A is the No-Action Alternative, which would continue current management practices and trends, with no major changes in direction.

Alternative B emphasizes the natural environment by keeping the site largely

undeveloped and natural in character outside of the core historic areas. Potential areas for visitor interpretive programs are the most limited in this alternative.

Alternative C emphasizes the restoration of the most areas of the park to the 1941–1945 historic period of significance, while providing an emphasis on the natural environment outside of the core historic and visitor areas.

Alternative D is the NPS's preferred and the environmentally preferred alternative. In addition to preserving the core historic area, Alternative D offers a high potential for interpretive and educational opportunities, and aims to provide the most diversity of visitor interpretive programs and recreational opportunities.

Alternative E would emphasize the restoration of a large portion of the park to the 1941–1945 historic period of significance, while offering the most recreational opportunities of all the alternatives.

The FEIS/GMP evaluates potential environmental consequences of implementing the five alternatives. It describes and analyzes potential impacts of the affected cultural and natural resources, socioeconomic environments, visitor use and experience, and NPS operations within and near the park. Eleven resource topics are also addressed, including archeological resources; cultural landscapes, including historic buildings, structures, and districts; water resources; water quality; floodplains; soils; vegetation and wetlands; wildlife; special status species; ecologically critical areas; and natural soundscapes.

**DATES:** The NPS will execute a Record of Decision no sooner than 30 days following publication by the Environmental Protection Agency of this Notice of Availability in the **Federal Register**.

**ADDRESSES:** Copies of the FEIS/GMP are available by contacting the Park Superintendent at Tuskegee Airmen National Historic Site, 1616 Chappie James Avenue, Tuskegee, Alabama 36083; telephone: 334–727–6390. An electronic copy of the FEIS/GMP is available on the Internet at <http://parkplanning.nps.gov>.

**AUTHORITY:** The authority for publishing this notice is 40 CFR 1506.6.

**FOR FURTHER INFORMATION CONTACT:** The Superintendent, Tuskegee Airmen National Historic Site, at the address and telephone number shown above; or Amy Wirsching, Southeast Regional Office, at 404–507–5708.

The responsible official for this FEIS is the Regional Director, Southeast Region, NPS, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: March 31, 2010.

**David Vela,**

*Regional Director, Southeast Region.*

[FR Doc. 2010–8543 Filed 4–13–10; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[CACA 47740, LLCAD07000 L51030000]

#### Notice of Closure of Airport Mesa/Carizzo Creek Shooting Area in Eastern San Diego County, CA

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of temporary closure.

**SUMMARY:** The Bureau of Land Management (BLM) has closed approximately 210 acres of public land described as the Airport Mesa/Carrizo Creek shooting area located in eastern San Diego County, California. The closure order prohibits recreational shooting and target practice. The use of firearms will continue to be allowed for hunting consistent with California Department of Fish and Game regulations and seasons. This closure order is necessary in order to protect U.S. Border Patrol agents as they perform their duties along the top of Airport Mesa.

**DATES:** The closure order is effective as of September 23, 2009 until September 22, 2011.

**FOR FURTHER INFORMATION CONTACT:** Daniel Steward, BLM El Centro Field Office, 1661 S. 4th St., El Centro, CA 92243, telephone (760) 337–4400.

**SUPPLEMENTARY INFORMATION:** The BLM recognizes that recreational target shooting is a valid use of public lands and seeks to balance this with the need to provide for public safety. The BLM El Centro Field Office prepared an environmental assessment (EA) for this temporary closure (EA670–2010–1). This two-year temporary closure will allow the BLM to prepare a land use plan amendment and utilize public input to consider a permanent closure of the area and options for alternative recreational shooting areas.

The purpose of this closure order is to protect persons, property, and public land and resources, including the protection of U.S. Border Patrol agents as they perform their duties along the top of Airport Mesa.

The closure order is in accordance with the provisions of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579, 90 stat. 2743, 43 U.S.C. 1701 *et seq.*) and 43 CFR 8360.0-7. Maximum penalties for violation of this order are a \$1,000 fine and/or 12 months in prison pursuant to 43 CFR 8360.0-7.

This order closes the following public lands in eastern San Diego County to recreational shooting and target practice:

**San Bernardino Base and Meridian, California**

T. 18 S., R. 8 E.,

Sec. 3, S  $\frac{1}{2}$  S  $\frac{1}{4}$  SE  $\frac{1}{4}$ , portion south of Hwy. 80;

Sec. 10, N  $\frac{1}{2}$  NE  $\frac{1}{4}$ ; SE  $\frac{1}{4}$  NE  $\frac{1}{4}$ ; Lot 9;

Sec. 11, SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ ; Lot 12.

Containing 210 acres, more or less.

The following persons are exempt from the identified restrictions:

(1) Federal, State, or local law enforcement officers, while engaged in the execution of their official duties;

(2) Any person in receipt of a written authorization of exemption obtained from the authorized officer;

(3) Any person with a legal California hunting license in their possession and in the legal act of hunting.

This Notice and maps of the restricted area will be clearly posted at main entry points to the Airport Mesa shooting area and will also be available at the BLM El Centro Field Office.

**Authority:** 43 CFR 8364.1 and 8360.0-7.

**Daniel Steward,**

*Acting El Centro Field Office Manager.*

[FR Doc. 2010-8563 Filed 4-13-10; 8:45 am]

**BILLING CODE 4310-40-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2010-0016]

#### Derricks; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend OMB's approval of the information collection requirements specified in its Standard on Derricks (29 CFR 1910.181).

**DATES:** Comments must be submitted (postmarked, sent, or received) by June 14, 2010.

#### ADDRESSES:

**Electronically:** You may submit comments and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

**Facsimile:** If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693-1648.

**Mail, hand delivery, express mail, messenger, or courier service:** When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA-2010-0016, U.S. Department of Labor, Occupational Safety and Health Administration, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

**Instructions:** All submissions must include the Agency name and OSHA docket number for the Information Collection Request (ICR) (OSHA Docket No. OSHA-2010-0016). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at <http://www.regulations.gov>. For further information on submitting comments see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

**Docket:** To read or download comments or other material in the docket, go to <http://www.regulations.gov> or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

#### FOR FURTHER INFORMATION CONTACT:

Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N-3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2222.

#### SUPPLEMENTARY INFORMATION:

#### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA-95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement as well as how they use it. The purpose of these requirements is to prevent death and serious injuries among workers by ensuring that the derrick is not used to lift loads beyond its rated capacity and that all the ropes are inspected for wear and tear.

Paragraph (c)(1) requires that for permanently installed derricks a clearly legible rating chart must be provided with each derrick and securely affixed to the derrick. Paragraph (c)(2) requires that for non-permanent installations the manufacturer must provide sufficient information from which capacity charts can be prepared by the employer for the particular installation. The capacity charts must be located at the derrick or at the jobsite office. The data on the capacity charts provide information to the workers to assure that the derricks are used as designed and not overloaded or used beyond the range specified in the charts.

Paragraph (f)(2)(i)(d) requires that warning or out of order signs must be placed on the derrick hoist while adjustments and repairs are being performed.

Paragraph (g)(1) requires employers to thoroughly inspect all running rope in

use, and to do so at least once a month. In addition, before using rope which has been idle for at least a month, it must be inspected as prescribed by paragraph (g)(3) and a record prepared to certify that the inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, workers, and OSHA compliance officers with assurance that the ropes are in good condition.

*Disclosure of Charts Under Paragraph (c) and Inspection Certification Records Under Paragraph (g).* The Standard requires the disclosure of charts and inspection certification records if requested during an OSHA inspection.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Derricks (29 CFR 1910.181). The Agency is requesting that it retain its previous estimate of 1,356 burden hours. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

*Type of Review:* Extension of a currently approved collection.

*Title:* Derricks (29 CFR 1910.181).

*OMB Number:* 1218-0222.

*Affected Public:* Business or other for-profits.

*Number of Respondents:* 500.

*Frequency:* Initially, Annually; On occasion.

*Average Time Per Response:* Varies from one minute (.02 hour) to maintain rating load charts to 13 minutes (.22 hour) to inspect ropes and to develop and maintain the inspection certification record.

*Estimated Total Burden Hours:* 1,356.  
*Estimated Cost (Operation and Maintenance):* \$0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (OSHA Docket No. OSHA-2010-0016). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693-2350, (TTY) (877) 889-5627).

Comments and submissions are posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the <http://www.regulations.gov> Web site to submit comments and access the docket is available at the Web site's "User Tips" link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document as well as news releases and other relevant information also are

available at OSHA's Web page at <http://www.osha.gov>.

## V. Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

Signed at Washington, DC, on April 9, 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010-8533 Filed 4-13-10; 8:45 am]

BILLING CODE 4510-26-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2010-0005]

### Request for Nominations To Serve on the Advisory Committee on Construction Safety and Health (ACCSH)

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for nominations to serve on the Advisory Committee on Construction Safety and Health (ACCSH).

**SUMMARY:** The Assistant Secretary of Labor for Occupational Safety and Health invites interested parties to submit nominations for membership on ACCSH.

**DATES:** Nominations for ACCSH must be submitted (postmarked, sent, transmitted, or received) by June 14, 2010.

**ADDRESSES:** You may submit nominations and supporting materials by any one of the following methods:

*Electronically:* Nominations, including attachments, may be submitted electronically at <http://www.regulations.gov>, the Federal eRulemaking Portal. Follow the online instructions for submitting nominations;

*Facsimile:* If your nomination and supporting materials, including attachments, do not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693-1648;

*Mail, express delivery, hand delivery, messenger or courier service:* Submit your nomination and supporting materials to the OSHA Docket Office, Docket No. OSHA-2010-0005, U.S. Department of Labor, N-2625, 200

Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (TTY number (877) 889-5627). Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., e.t.

**Instructions:** All nominations and supporting materials must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA-2010-0005). Because of security-related procedures, submitting nominations by regular mail may result in a significant delay in their receipt. Please contact the OSHA Docket Office for information about security procedures for submitting nominations by hand delivery, express delivery, and messenger or courier service. For additional information on submitting nominations, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section below.

All submissions in response to this **Federal Register** notice, including personal information provided, will be posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

**Docket:** To read or download submissions in response to this **Federal Register** notice, go to Docket No. OSHA-2010-0005 at <http://www.regulations.gov>. All documents in the docket are listed in the <http://www.regulations.gov> index; however, some documents (e.g., copyrighted material) are not publicly available to read or download through that Webpage. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

**FOR FURTHER INFORMATION CONTACT:** *For press inquiries:* Ms. Jennifer Ashley, Director, OSHA, Office of Communications, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999.

*For general information:* Mr. Michael M.X. Buchet, OSHA, Office of Construction Services, Directorate of Construction, Room N-3468, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone 202-693-2020; e-mail address [buchet.michael@dol.gov](mailto:buchet.michael@dol.gov).

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary of Labor for Occupational Safety and Health invites

interested parties to submit nominations for membership on ACCSH.

**Background.** ACCSH is a continuing advisory committee established under Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act)(40 U.S.C. 3704(d)(4)), to advise the Secretary of Labor in formulating construction safety and health standards as well as on policy matters arising under the Construction Safety Act (CSA) and the Occupational Safety and Health Act of 1970 (OSH Act)(29 U.S.C. 651 *et seq.*). In particular, 29 CFR 1911.10(a) and 1912.3(a) provide that the Assistant Secretary shall consult ACCSH whenever the Agency proposes any safety or health standard that affects the construction industry.

ACCSH operates in accordance with the CSA, the OSH Act, the Federal Advisory Committee Act (FACA)(5 U.S.C. App. 2), and regulations issued pursuant to those statutes (29 CFR part 1912, 41 CFR part 102-3). ACCSH generally meets two to four times a year.

**ACCSH membership.** ACCSH is comprised of 15 members appointed by the Assistant Secretary. The categories of ACCSH membership and the number of new members to be appointed are:

- Five members who are qualified by experience and affiliation to present the viewpoint of employers in the construction industry: Two employer representatives will be appointed;
- Five members who are similarly qualified to present the viewpoint of employees in the construction industry: Two employee representatives will be appointed;
- Two representatives of State safety and health agencies: One representative of State safety and health agencies will be appointed;
- Two public members, qualified by knowledge and experience to make a useful contribution to the work of ACCSH, such as those who have professional or technical experience and competence with occupational safety and health in the construction industry: One public representative will be appointed; and
- One representative designated by the Department of Health and Human Services and appointed by the Secretary of Labor serves an indefinite term: No appointment is needed.

ACCSH members serve staggered two-year terms, unless they resign, cease to be qualified, become unable to serve, or are removed (29 CFR 1912.3(e)). A qualified ACCSH member whose term has expired may continue to serve until a successor is appointed. ACCSH members may be appointed to successive terms. Any member absent

from two consecutive ACCSH meetings may be removed or replaced. No member of ACCSH, other than members who represent employers or employees, shall have an economic interest in any proposed rule that affects the construction industry (29 CFR 1912.6).

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse ACCSH membership. Any interested person or organizations may nominate one or more individuals for membership on ACCSH. Interested persons also are invited and encouraged to submit statements in support of particular nominees.

#### **Submission requirements.**

Nominations must include the following information:

- (1) Nominee's contact information (address, telephone, e-mail) and current employment or position;
- (2) Nominee's resume or curriculum vitae, including prior membership on ACCSH and other relevant organizations and associations;
- (3) Categories of membership (employer, employee, public, State safety and health agency) that the nominee is qualified to represent;
- (4) A summary of background, experience and qualifications that addresses the nominee's suitability for each of the nominated membership categories;
- (5) Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience and expertise in occupational safety and health, particularly as it pertains to the construction industry; and
- (6) A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in ACCSH meetings, and has no conflicts of interest that would preclude membership on ACCSH.

**Member selection.** Information received through this nomination process in addition to other relevant sources of information will assist the Assistant Secretary in selecting members for ACCSH. In selecting ACCSH members, the Assistant Secretary will consider individuals nominated in response to this **Federal Register** notice as well as other qualified individuals. OSHA will publish the list of new ACCSH members in the **Federal Register**.

#### **Public Participation**

**Instructions for submitting nominations:** All nominations, supporting documents, attachments and other materials must identify the Agency name and the docket number for this notice (Docket No. OSHA-2010-

0005). You may submit materials: (1) Electronically at <http://www.regulations.gov>, (2) by FAX, or (3) by hard copy. You may supplement electronic submissions by attaching electronic files. Alternatively, if you wish to supplement electronic submissions with hard copy documents you must submit them to the OSHA Docket Office and clearly identify your electronic submission by Agency name and docket number (Docket No. OSHA-2010-0005), so that the materials can be attached to the electronic submission.

Materials submitted by mail may experience significant delays because of security-related procedures. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office.

All submissions, including personal information provided, will be posted in the docket without change, therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birth dates.

Guidance on submitting nominations and supporting materials is available on-line at <http://www.regulations.gov> and from the OSHA Docket Office.

**Access to docket.** All submissions in response to this **Federal Register** notice are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download from that Web page. All submissions, including materials not

available on-line, are available for inspection and copying at the OSHA Docket Office (see **ADDRESSES** section). For information about accessing materials in Docket No. OSHA-2010-0005, including materials not available on-line, contact the OSHA Docket Office.

Access to **Federal Register** notice. Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, as well as news releases and other relevant information, is available at OSHA's Web page at <http://www.osha.gov>.

#### Authority and Signature

David Michaels, PhD, MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704), the Federal Advisory Committee Act (5 U.S.C. App. 2), 29 CFR part 1912, 41 CFR part 102-3, and Secretary of Labor's Order No. 5-2007 (72 FR 31160).

Signed at Washington, DC, this 7th day of April 2010.

**David Michaels,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2010-8531 Filed 4-13-10; 8:45 am]

**BILLING CODE 4510-26-P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meetings of the Board of Directors; Notice

**DATE AND TIME:** The Legal Services Corporation Board of Directors will meet on April 16-17, 2010. On Friday April 16, the meeting will commence at 1:30 p.m., Mountain Time. On April 17, the first meeting will commence at 8:30 a.m., Mountain Time. On each of these two days, each meeting other than the first meeting of the day will commence promptly upon adjournment of the immediately preceding meeting.

**LOCATION:** The Sheraton Hotel, 5151 E. Grant Road, Tucson, Arizona 85712.

**PUBLIC OBSERVATION:** Unless otherwise noticed, all meetings of the LSC Board of Directors are open to public observation. Members of the public that are unable to attend but wish to listen to a public proceeding may do so by following the telephone call-in directions given below. You are asked to keep your telephone muted to eliminate background noises. From time to time the presiding Chair may solicit comments from the public.

#### Call-In Directions for Open Sessions:

- Call toll-free number: 1-(866) 451-4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please "MUTE" your telephone immediately.

## MEETING SCHEDULE

	Time <sup>1</sup>
<b>Friday, April 16, 2010</b>	
1. Promotion & Provision for the Delivery of Legal Services Committee ("Promotions & Provisions Committee") .....	1:30 p.m.
<b>Saturday, April 17, 2010</b>	
1. Governance & Performance Review Committee .....	8:30 a.m.
2. Joint Meeting of the Audit and Operations & Regulations Committees	
3. Audit Committee	
4. Operations & Regulations Committee	
5. Finance Committee	
6. Board of Directors	

**STATUS OF MEETING:** Open, except as noted below.

• *Operations & Regulations Committee*—Open, except that a portion of the meeting of the Operations & Regulations Committee may be closed to the public pursuant to a vote of the

Board of Directors to receive a staff briefing.<sup>2</sup>

A *verbatim* written transcript will be made of the closed session of the Board

<sup>2</sup> Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(g), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is

<sup>1</sup> Please note that all times in this notice are in the Mountain Time zone.

authorized by law will be available upon request.

- *Board of Directors*—Open, except that a portion of the meeting of the Board of Directors may be closed to the public pursuant to a vote of the Board of Directors to consider and perhaps act on the General Counsel's report on potential and pending litigation involving LSC, and to hear briefings by LSC's President and Inspector General.<sup>3</sup>

A *verbatim* written transcript will be made of the closed session of the Board meeting. However, the transcript of any portions of the closed session falling within the relevant provisions of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(9)(B), and the corresponding provisions of the Legal Services Corporation's implementing regulation, 45 CFR 1622.5(g), will not be available for public inspection. A copy of the General Counsel's Certification that in his opinion the closing is authorized by law will be available upon request.

#### Matters To Be Considered

*Friday, April 16, 2010*

Promotion and Provision for the Delivery of Legal Services Committee; Agenda

1. Approval of agenda.
2. Approval of Minutes of the Committee's meeting of January 29, 2010.
3. Consider and act on Committee charter discussion to reflect name change.

4. Presentation by Arizona legal services programs—The Economic Downturn in Arizona: The Impact on Clients and Grantees.

##### *Presenters:*

- a. *Lillian Johnson, Executive Director, Community Legal Services, Phoenix.*
- b. *Anthony Young, Executive Director, Southern Arizona Legal Aid, Tucson.*
- c. *Levon Henry, Executive Director, DNA Peoples Legal Services, Window Rock.*

5. Staff Updates—*Karen Sarjeant, Vice President for Programs & Compliance.*

- LSC Private Attorney Involvement Action Plan—Help Close the Justice Gap: Unleash the Power of Pro Bono.
  - Garten Loan Repayment Assistance Program.
  - Other Updates.
6. Public comment.

7. Consider and act on other business.
8. Consider and act on adjournment of meeting.

*Saturday, April 17, 2010*

Governance and Performance Review Committee; Agenda

1. Approval of agenda.
2. Approval of Minutes of the Committee's meeting of January 29, 2010.
3. Staff report on summary of self assessment comments and goals from 2009 Board Self-Assessment cycle.
4. Staff report on results of data collection for Board 2010 Training Plan.
5. Consider and Act on Board 2010 Training Plan—*Resolution 2010-XXX.*
6. Consider and Act on Committee Self Assessment Plan for 2010—*Resolution 2010-XXX.*
7. Public comment.
8. Consider and act on other business.
9. Consider and act on adjournment of meeting.

Joint Meeting of the Audit and Operations & Regulations Committees; Agenda

1. Approval of agenda.
2. Consider and act on revisions to the LSC Accounting Guide for LSC Recipients.
- Presentation by Chuck Greenfield, Program Counsel III.
- Public Comment.
3. Public comment.
4. Consider and act on other business.
5. Consider and act on adjournment of meeting.

Audit Committee; Agenda

1. Approval of agenda.
2. Approval of minutes of the Committee's January 29, 2010 meeting.
3. Follow-up to FY 2009 Annual Audit Management recommendations.
- David Richardson, Treasurer/Comptroller.
- Charles Jeffress, Chief Administrative Officer.
4. Staff report on classification of consultants.
- Mattie Cohan, Senior Assistant General Counsel.
5. Quarterly review of 403(b) plan performance.
- Charles Jeffress, Chief Administrative Officer.
6. Review of schedule for 403(b) plan audit.
- Charles Jeffress, Chief Administrative Officer.
7. Discussion of schedule for Audit Committee review of management processes.
8. Briefing by Inspector General.
9. Public comment.

10. Consider and act on other business.

11. Consider and act on adjournment of meeting.

Operations & Regulations Committee; Agenda

##### *Open Session:*

1. Approval of agenda.
  2. Approval of Minutes of the Committee's Open Session meeting of January 30, 2010.
  3. Consider and act on Draft Final Rule to amend 45 CFR Part 1642 (and related technical amendment of Part 1609 and 1610) to repeal the prohibition on claiming and collecting and retention of attorneys' fees.
  - Presentation by Mattie Cohan, Senior Assistant General Counsel.
  - Public Comment.
  4. Staff Update on GAO Reviews.
  5. Public comment.
- ##### *Closed Session:*
6. Briefing on an internal administrative matter.
  7. Management briefing on operations.
  8. Consider and act on other business.
  9. Consider and act on adjournment of meeting.

Finance Committee; Agenda

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of January 29, 2010.
3. Staff report on LRAP expenditures, commitments, and recoveries.
- Presentation by Charles Jeffress, Chief Administrative Officer.
- Comments by David Richardson, Treasurer and Comptroller.
4. Consider and act on revised protocol for the acceptance and use of private contributions, *Resolution 2010-XXX.*
- Presentation by David Richardson, Treasurer and Comptroller.
5. Consider and act on the Consolidated Operating Budget for FY 2010 and recommend *Resolution 2010-XXX* to the full Board.
- Presentation by David Richardson, Treasurer/Comptroller.
- Comments by Charles Jeffress, Chief Administrative Officer.
6. Presentation on LSC's Financial Reports for the first five months of FY 2010.
- Presentation by David Richardson, Treasurer/Comptroller.
- Comments by Charles Jeffress, Chief Administrative Officer.
7. Report on FY 2011 appropriations process.
- Presentation by John Constance, Director, Office of Government Relations and Public Affairs.
8. Public comment.

<sup>3</sup> Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to such portion of the closed session. 5 U.S.C. 552b(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.



9. Consider and act on other business.
10. Consider and act on adjournment of meeting.

#### Board of Directors; Agenda

##### Open Session:

1. Approval of agenda.
2. Approval of Minutes of the Board's Open Session Telephonic meeting of December 22, 2009.

3. Approval of Minutes of the Board's Open Session meeting of January 30, 2010.

4. Consider and act on whether to begin each meeting, or the first of a series of meetings, with the Pledge of Allegiance.

5. Consider and act on whether to establish a Search Committee for LSC President ("Search Committee"), Resolution 2010-XXX, and if so:

- a. Consider and act on Charter for Search Committee;
- b. Consider and act on whether to delegate to the Search Committee the authority to approve and issue a Request for Proposals for executive search firm services;

- c. Consider and act on whether to approve for issuance a Request for Proposals for executive search firm services.

6. Consider and act on Resolutions 2010-XXXa-f thanking outgoing Board Members for their service and contributions to the Legal Services Corporation.

7. Chairman's Report.

8. Members' Reports.

9. President's Report.

10. Inspector General's Report.

11. Consider and act on the report of the Promotion & Provision for the Delivery of Legal Services Committee.

12. Consider and act on the report of the Finance Committee.

13. Consider and act on the report of the Audit Committee.

14. Consider and act on the report of the Operations & Regulations Committee.

15. Consider and act on the report of the Governance & Performance Review Committee.

16. Consider and act on Resolution 2010-XXX expressing the Board's appreciation to Patricia Batie, acting Corporate Secretary, Legal Services Corporation.

17. Public comment.

18. Consider and act on other business.

19. Consider and act on whether to authorize an executive session of the Board to address items listed below under Closed Session.

##### Closed Session:

20. Consider and act on General Counsel's report on potential and pending litigation involving LSC.

21. IG briefing of the Board.

22. Consider and act on motion to adjourn meeting.

##### Contact Person for Information:

Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295-1500. Questions may be sent by electronic mail to

FR\_NOTICE\_QUESTIONS@lsc.gov.

*Special Needs:* Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Katherine Ward, at (202) 295-1500 or FR\_NOTICE\_QUESTIONS@lsc.gov.

Dated: April 9, 2010.

**Patricia D. Batie,**

Corporate Secretary.

[FR Doc. 2010-8595 Filed 4-12-10; 11:15 am]

**BILLING CODE 7050-01-P**

## NATIONAL COUNCIL ON DISABILITY

### Sunshine Act Meetings

**DATE AND TIMES:** April 20, 2010, 12 noon-5 p.m.

**PLACE:** National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC 20004.

**STATUS:** Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Current NCD Projects.

**PORTIONS OPEN TO THE PUBLIC:** April 20, 2010, 12 noon-1 p.m.

**MATTERS TO BE CONSIDERED:** Closed Executive Session.

**PORTIONS CLOSED TO THE PUBLIC:** April 20, 2010, 1 p.m.-5 p.m.

#### FOR FURTHER INFORMATION CONTACT:

Mark Quigley, Director of Communications, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202-272-2004, 202-272-2074 (TTY).

Dated: April 8, 2010.

**Joan M. Durocher,**

Executive Director.

[FR Doc. 2010-8634 Filed 4-12-10; 4:15 pm]

**BILLING CODE 6820-MA-P**

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Advisory Committee for Computer and Information Science and Engineering—(1115).

*Date and Time:* May 7, 2010, 8:30 a.m.-5 p.m.

*Place:* The National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA.

To help facilitate your access into the building, please contact Cassandra Queen at the Directorate for Computer and Information Science and Engineering at 703/292-8900 prior to the meeting so that a visitor's badge may be prepared for you in advance.

*Type of Meeting:* Open.

*Contact Person:* Rita Koch, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington VA 22230. Telephone: (703) 292-8900.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

*Agenda:* Report from the Assistant Director. Discussion of research, education, diversity, workforce issues in IT and long-range funding outlook.

Dated: April 8, 2010.

**Susanne Bolton,**

Committee Management Officer.

[FR Doc. 2010-8458 Filed 4-13-10; 8:45 am]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-255; NRC-2010-0152]

### Palisades Nuclear Plant; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-20 issued to Entergy Nuclear Operations, Inc. (ENO) (the licensee) for operation of the Palisades Nuclear Plant (PNP) located in Van Buren County, Michigan.

The proposed amendment would add new license condition 2.C(4) stating that performance of Technical Specification (TS) surveillance requirement (SR) 3.1.4.3, which verifies control rod freedom of movement, is not required for control rod drive (CRD) 22 during cycle 21 until the next entry into Mode 3 in a maintenance or refueling outage, whichever is earlier.

Before issuance of the proposed license amendment, the Commission will have made findings required by the



Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed license amendment adds a license condition to forgo the remaining two required surveillance tests of one control rod from the PNP TS surveillance requirement for partial movement every 92 days. Since the control rod remains operable, the proposed license condition does not affect or create any accident initiators or precursors. As such, the proposed license condition does not increase the probability of an accident.

The proposed license amendment does not increase the consequences of an accident. The ability to move a full-length control rod by its drive mechanism is not an initial assumption used in the safety analyses. The safety-analyses assume full-length control rod insertion, except the most reactive rod, upon reactor trip. The surveillance requirement performed during the last refueling outage verified control rod drop times are within accident analysis assumptions. ENO has determined that CRD seal leakage does not increase the likelihood of an untrippable control rod. The assumptions of the safety analyses will be maintained, and the consequences of an accident will not be increased.

Therefore, operation of the facility in accordance with the proposed license condition would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed license condition does not involve a physical alteration of any structure, system or component (SSC) or change the way any SSC is operated. The proposed license condition does not involve operation of any required SSCs in a manner or configuration differently from those

previously recognized or evaluated. No new failure mechanisms would be introduced by the requested SR interval extension.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed license condition does not affect operability of the control rod. It will have the same capability to mitigate an accident as it had prior to the proposed license condition.

Therefore, the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID NRC-2010-0152 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your

comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

**Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0152. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Michael T. Lesar, Chief, Rulemaking, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RADB at (301) 492-3446.

You can access publicly available documents related to this notice using the following methods:

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**Federal Rulemaking Web site:** Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2010-0152.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license.

Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/doc-collections/cfr/>. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the

petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to request (1) a digital ID certificate, which allows the

participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The

E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the "Contact Us" link located on the NRC Web site at <http://www.nrc.gov/site-help/e-submittals.html>, by e-mail at [MSHD.Resource@nrc.gov](mailto:MSHD.Resource@nrc.gov), or by a toll-free call at (866) 672-7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is

available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

For further details with respect to this license amendment application, see the application for amendment dated March 31, 2010, which is available for public inspection at the Commission's PDR, located at One White Flint North, Room O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

*Attorney for licensee:* Mr. William Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Ave., White Plains, NY 10601.

Dated at Rockville, Maryland, this 7th day of April, 2010.

For the Nuclear Regulatory Commission.

**Maresh Chawla,**

*Project Manager, Plant Licensing Branch III-1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-8509 Filed 4-13-10; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-483; NRC-2010-0151]

### Union Electric Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-30, issued to Union Electric Company (the licensee), for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The proposed amendment would revise the Technical Specification (TS) 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," regarding function 6.g in TS Table 3.3.2-1. Function 6.g provides an auxiliary feedwater (AFW) start signal that is provided to the motor-driven AFW pumps in the event of a trip of both turbine-driven main feedwater (MFW) pumps. The changes would revise Condition J for ESFAS instrumentation function 6.g to read, "One or more Main Feedwater Pumps trip channel(s) inoperable." The licensee will make corresponding changes to Required Action J.1 and the Note above Required Actions J.1 and J.2 for consistency with the revised Condition.

In accordance with the requirements of paragraph 50.91(a)(6) of Title 10 of the *Code of Federal Regulations* (10 CFR), the licensee requested approval of the amendment on exigent basis. The licensee stated that exigent approval was needed due to the time-critical nature of the requested amendment. The licensee requested approval of the amendment by May 14, 2010. The exigency arises due to the fact that, in the absence of approval of the amendment to TS 3.3.2, if the running MFW pump were to trip, Callaway Plant, Unit 1, will not be able to resume operation to the plant's licensed power level upon restart from its refueling outage 17, scheduled to end on May 14, 2010.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's

regulations in 10 CFR Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[Union Electric Company] has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, "Issuance of amendment," Part 50.92(c), as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no design changes are proposed to the protection systems. The same reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the credited functions in the plant design and analysis basis. There will be no changes to the protection system surveillance and operating limits.

The proposed changes will not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes will not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended functions to mitigate the consequences of an initiating event within the assumed acceptance limits.

Therefore, the proposed changes will have no impact on the probability of occurrence of an accident previously evaluated in the FSAR [Final Safety Analysis Report].

The transients and design basis events for which the initiation of the AFW system is credited are the main steam line break, loss of non-emergency AC [alternating current] power, loss of normal feedwater, main feed line break, and small break loss of coolant accident. The analyses of these events in FSAR Chapter 15 assume actuation of the AFW system due to a loss of offsite power signal (starts the turbine-driven AFW pump only), steam generator water level low-low signal (starts the motor-driven AFW pumps for low level in one steam generator, and starts the turbine-driven AFW pump for low level in two steam generators), or a safety injection signal (starts the motor-driven AFW pumps). The anticipatory motor-driven AFW pump auto-start signals from the turbine-driven MFW pumps are not credited in any

design basis accidents and are, therefore, not part of the primary success path for postulated accident mitigation as defined by 10 CFR 50.36(c)(2)(ii), Criterion 3. Modifying TS 3.3.2 Condition J and its Required Actions for ESFAS instrumentation function 6.g will not impact any previously evaluated design basis accidents.

All accident analysis acceptance criteria will continue to be met with the proposed changes. The proposed changes will not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR. The applicable radiological dose acceptance criteria will continue to be met.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes would provide a TS Condition for more than one inoperable channel within ESFAS instrumentation function 6.g. These changes involve an anticipatory motor-driven AFW pump auto-start function that is not credited in any accident analysis. The proposed changes do not affect the credited ESFAS functions that actuate AFW due to a loss of offsite power, steam generator water level low-low, or a safety injection signal.

The proposed changes will not affect the normal method of plant operation or change any operating parameters. No equipment performance requirements will be affected. The proposed changes will not alter any assumptions made in the safety analyses.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment. There will be no adverse effect or challenges imposed on any safety-related system as a result of this amendment.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, Solid State Protection System, BOP [Balance of Plant] ESFAS, MSFIS [Main Steam and Feed Isolation System], or LSELS [Load Shedding and Emergency Load Sequencing] used in the plant protection systems.

Therefore, the proposed changes do not create the possibility of a new or different [kind of] accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes involve the automatic start of the motor-driven AFW pumps after a trip of both turbine-driven MFW pumps which is not a credited start signal for any design basis event. This change does not modify any values or limits involved in a safety-related function or accident analysis.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor ( $F_Q$ ), nuclear enthalpy rise hot channel factor ( $F_{\Delta H}$ ), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The applicable radiological dose consequence acceptance criteria will continue to be met.

The proposed changes do not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. No instrument setpoints or system response times are affected. None of the acceptance criteria for any accident analysis will be changed.

The proposed changes will have no impact on the radiological consequences of a design basis accident.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

**ADDRESSES:** You may submit comments by any one of the following methods. Please include Docket ID NRC-2010-0151 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site Regulations.gov. Because your comments will not be edited to remove

any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

**Federal Rulemaking Web site:** Go to <http://www.regulations.gov> and search for documents filed under Docket ID NRC-2010-0151. Address questions about NRC dockets to Carol Gallagher 301-492-3668; e-mail [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov).

**Mail comments to:** Michael T. Lesar, Chief, Rulemaking, Announcements and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB-05-B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by fax to RDB at (301) 492-3446.

You can access publicly available documents related to this notice using the following methods:

**NRC's Public Document Room (PDR):** The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

**NRC's Agencywide Documents Access and Management System (ADAMS):** Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

**Federal Rulemaking Web site:** Public comments and supporting materials related to this notice can be found at <http://www.regulations.gov> by searching on Docket ID: NRC-2010-0151.

Within 60 days of this notice, any person(s) whose interest may be affected may file a request for hearing/petition to intervene. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the requestor/petitioner in the proceeding, and how that interest may

be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing

held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by e-mail at [hearing.docket@nrc.gov](mailto:hearing.docket@nrc.gov), or by telephone at (301) 415-1677, to (1) request a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals/apply-certificates.html>. System requirements for accessing the E-Submittal server are detailed in NRC's "Guidance for Electronic Submission," which is available on the agency's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able

to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at <http://www.nrc.gov/site-help/e-submittals.html>.

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at <http://www.nrc.gov/site-help/e-submittals.html>. A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The E-Filing system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

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Participants who believe that they have a good cause for not submitting

documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at [http://ehd.nrc.gov/EHD\\_Proceeding/home.asp](http://ehd.nrc.gov/EHD_Proceeding/home.asp), unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from April 14, 2010. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii).

For further details with respect to this exigent license application, see the application for amendment dated March 29, 2010, as supplemented by letter dated March 29, 2010 (Agencywide Documents Access and Management

System (ADAMS) Accession Nos. ML100880430 and ML100890460, respectively), which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site <http://www.nrc.gov/reading-rm/adams.html>. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1-800-397-4209, or 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov).

*Attorney for licensee:* John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 7th day of April 2010.

For the Nuclear Regulatory Commission.

**Mohan C. Thadani,**

*Senior Project Manager, Plant Licensing Branch LPL4, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.*

[FR Doc. 2010-8511 Filed 4-13-10; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL REGULATORY COMMISSION

[Docket No. CP2010-37; Order No. 440]

### New Postal Product

**AGENCY:** Postal Regulatory Commission.  
**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services 2 (GEPS 2) product to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

**DATES:** Comments are due: April 15, 2010.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202-789-6820 or [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:****Table of Contents**

- I. Introduction
- II. Notice of Filing
- III. Ordering Paragraphs

**I. Introduction**

On April 7, 2010, the Postal Service filed a notice announcing that it has entered into an additional Global Expedited Package Services 2 (GEPS 2) contract.<sup>1</sup> The Postal Service believes the instant contract is functionally equivalent to previously submitted GEPS 2 contracts, and is supported by Governors' Decision No. 08-7, attached to the Notice and originally filed in Docket No. CP2008-4. *Id.* at 1, Attachment 3. The Notice also explains that Order No. 86, which established GEPS 1 as a product, also authorized functionally equivalent agreements to be included within the product, provided that they meet the requirements of 39 U.S.C. 3633. *Id.* at 1. In Order No. 290, the Commission approved the GEPS 2 product.<sup>2</sup>

*The instant contract.* The Postal Service filed the instant contract pursuant to 39 CFR 3015.5. In addition, the Postal Service contends that the contract is in accordance with Order No. 86. The Postal Service submitted the contract and supporting materials under seal, a redacted copy of the contract as Attachment 1, a certified statement required by 39 CFR 3015.5(c)(2) as Attachment 2, Governors' Decision No. 08-7 and an application for non-public treatment of materials as Attachments 3 and 4, respectively. *Id.* at 1-2. The term of the contract is 1 year from the date the Postal Service notifies the customer that all necessary regulatory approvals have been received.

The Notice advances reasons why the instant GEPS 2 contract fits within the Mail Classification Schedule language for GEPS 2. The Postal Service identifies customer-specific information, general contract terms and other differences that distinguish the instant contract from the baseline GEPS 2 agreement, all of which are highlighted in the Notice. *Id.* at 3-6. It contends that the instant contract is functionally equivalent to the GEPS 2 contracts filed previously notwithstanding these differences. *Id.* at 6-7.

<sup>1</sup> Notice of United States Postal Service Filing of Functionally Equivalent Global Expedited Package Services 2 Negotiated Service Agreement and Application for Non-Public Treatment of Materials Filed Under Seal, April 7, 2010 (Notice).

<sup>2</sup> Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290).

The Postal Service asserts that several factors demonstrate the contract's functional equivalence with previous GEPS 2 contracts, including the general terms of the contract, the market to which it is being offered, and its cost characteristics. *Id.* at 3. The Postal Service concludes that because the "GEPS agreements incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same..." despite any incidental differences. *Id.* at 6.

The Postal Service contends that its filings demonstrate that this new GEPS 2 contract is established in compliance with the requirements of 39 U.S.C. 3633, is functionally equivalent to previous GEPS 2 contracts, and requests that this contract be included within the GEPS 2 product. *Id.* at 7.

**II. Notice of Filing**

The Commission establishes Docket No. CP2010-37 for consideration of matters related to the contract identified in the Postal Service's Notice.

Interested persons may submit comments on whether the Postal Service's contract is consistent with the policies of 39 U.S.C. 3632, 3622 or 3642. Comments are due no later than April 15, 2010. The public portions of these filings can be accessed via the Commission's Web site (<http://www.prc.gov>).

The Commission appoints Natalie Rea to serve as Public Representative in the captioned filings.

**III. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket No. CP2010-37 for consideration of matters raised by the Postal Service's Notice.

2. Comments by interested persons in these proceedings are due no later than April 15, 2010.

3. Pursuant to 39 U.S.C. 505, Natalie Rea is appointed to serve as the officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

**Judith M. Grady,**  
*Acting Secretary.*

[FR Doc. 2010-8460 Filed 4-13-10; 8:45 am]

**BILLING CODE 7710-FW-S**

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration # 12077 and # 12078]

**South Dakota Disaster Number SD-00027**

**AGENCY:** Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA-1886-DR), dated 03/09/2010.

*Incident:* Severe Winter Storm and Snowstorm.

*Incident Period:* 12/23/2009 through 12/27/2009.

**DATES:** *Effective Date:* 04/06/2010.

*Physical Loan Application Deadline Date:* 05/10/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 12/09/2010.

**ADDRESSES:** Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of South Dakota, dated 03/09/2010, is hereby amended to include the following areas as adversely affected by the disaster.

*Primary Counties:* Brule.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2010-8528 Filed 4-13-10; 8:45 am]

**BILLING CODE 8025-01-P**

**SMALL BUSINESS ADMINISTRATION****Disaster Declaration # 12112 and # 12113 North Carolina Disaster # NC-00026**

**AGENCY:** Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of North Carolina dated 04/07/2010.

*Incident:* Severe Storms and Tornadoes.

*Incident Period:* 03/28/2010.



**DATES:** *Effective Date:* 04/07/2010.

*Physical Loan Application Deadline Date:* 06/07/2010.

*Economic Injury (EIDL) Loan Application Deadline Date:* 01/07/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Davidson, Guilford,

Contiguous Counties:

North Carolina: Alamance, Davie, Forsyth, Montgomery, Randolph, Rockingham, Rowan, Stanly, Stokes.

The Interest Rates are:

	Percent
<i>For Physical Damage</i>	
Homeowners With Credit Available Elsewhere .....	5.250
Homeowners Without Credit Available Elsewhere .....	2.625
Businesses With Credit Available Elsewhere .....	6.000
Businesses Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations With Credit Available Elsewhere ...	3.625
Non-Profit Organizations Without Credit Available Elsewhere .....	3.000
<i>For Economic Injury</i>	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations Without Credit Available Elsewhere .....	3.000

The number assigned to this disaster for physical damage is 12112 C and for economic injury is 12113 0.

The State which received an EIDL Declaration # is North Carolina

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 7, 2010.

**Karen G. Mills,**  
*Administrator.*

[FR Doc. 2010-8447 Filed 4-13-10; 8:45 am]

**BILLING CODE 8025-01-P**

## SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 12106]

### California Disaster # CA-00153 Declaration of Economic Injury

**AGENCY:** Small Business Administration.  
**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 04/06/2010.

*Incident:* Severe Winter Storms and Heavy Snow.

*Incident Period:* 01/17/2010 through 02/06/2010.

**DATES:** *Effective Date:* 04/06/2010.

*EIDL Loan Application Deadline Date:* 01/06/2011.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Siskiyou.

*Contiguous Counties:*

California: Del Norte, Humboldt, Modoc, Shasta, Trinity.

Oregon: Jackson, Josephine, Klamath.

*The Interest Rates are:*

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere .....	4.000
Non-Profit Organizations Without Credit Available Elsewhere .....	3.000

The number assigned to this disaster for economic injury is 121060.

The States which received an EIDL Declaration # are California and Oregon

(Catalog of Federal Domestic Assistance Number 59002)

Dated: April 6, 2010.

**Karen G. Mills,**  
*Administrator.*

[FR Doc. 2010-8445 Filed 4-13-10; 8:45 am]

**BILLING CODE 8025-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61876; File No. SR-NASDAQ-2010-025]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, To Amend the By-Laws of The NASDAQ OMX Group, Inc.

April 8, 2010

On February 24, 2010, The NASDAQ Stock Market LLC ("Nasdaq") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend the By-Laws of its parent corporation, The NASDAQ OMX Group, Inc. ("NASDAQ OMX"). The proposed rule change was published for comment in the **Federal Register** on March 4, 2010.<sup>3</sup> The Commission received no comment letters on the proposed rule change. On March 24, 2010, Nasdaq filed Amendment No. 1 to the proposed rule change. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.<sup>4</sup> This order approves the proposed rule change, as modified by Amendment No. 1.

On behalf of its parent company, Nasdaq proposed to make certain amendments to the NASDAQ OMX By-Laws to modify its direct election procedures set forth in Article IV, Section 4.4 of the NASDAQ OMX By-Laws. Under the existing NASDAQ OMX By-Laws, each director receiving a plurality of the votes at any election of directors at which a quorum is present is duly elected to the Board.<sup>5</sup> The NASDAQ OMX Corporate Governance Guidelines, however, provide a different standard for uncontested elections and also set forth additional election

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See Securities Exchange Act Release No. 61582 (February 25, 2010), 75 FR 9985 ("Notice").

<sup>4</sup> In Amendment No. 1, Nasdaq noted that the Board of Directors ("Board") of NASDAQ OMX originally approved the proposed rule change on December 16, 2009 and, on March 23, 2010 approved a portion of the proposed rule change that had not been previously approved.

<sup>5</sup> In the Notice, Nasdaq stated that this is derived from Section 216 of the General Corporation Law of the State of Delaware, which provides that in the absence of the specification in the certificate of incorporation or bylaws of a Delaware corporation (as is the case with NASDAQ OMX), the directors of a Delaware corporation shall be elected by a plurality of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. See Notice, *supra* note 3.



procedures and practices.<sup>6</sup> Nasdaq proposed to amend the NASDAQ OMX's By-Laws to codify the majority voting standard for uncontested elections contained in the Corporate Governance Guidelines; contested elections would remain subject to the plurality standard.

For uncontested elections, Nasdaq proposed to amend Article IV, Section 4.4 of the NASDAQ OMX By-Laws to impose a majority voting standard, instead of the plurality voting standard, that would require directors to be elected by the holders of a majority of the votes cast at any meeting for the election of directors at which a quorum is present. However, because a director holds office until his or her successor is duly elected and qualified, any incumbent director-nominee who fails to receive the requisite vote would not automatically cease to be a director. Instead, NASDAQ OMX would have such director continue as a "holdover director" until such director's death, resignation or removal, or until his or her successor is duly elected and qualified. To this end, the proposal also includes a provision that would require any incumbent nominee, as a condition to his or her nomination for election, to submit in writing an irrevocable resignation, the effectiveness of which would be conditioned upon the director's failure to receive the requisite vote in any uncontested election and the Board's acceptance of the resignation. The resignation would be considered by the Nominating & Governance Committee and acted upon by the Board in the same manner as a resignation tendered under current rules.<sup>7</sup> Acceptance of that resignation by the Board would be in accordance with the policies and procedures adopted by the Board for such purpose.<sup>8</sup>

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> In particular, the Commission finds that the proposed

rule change is consistent with Section 6(b)(1) of the Act,<sup>10</sup> which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members with the Act. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>11</sup> which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change to amend the NASDAQ OMX By-Laws to adopt a majority vote standard for uncontested elections is consistent with the Act. The Commission believes that the proposed rule change is designed to allow the members of NASDAQ OMX's Board of Directors to be elected in a manner that closely reflects the desires of its shareholders, while also providing a process for addressing the circumstance when a director fails to receive a majority of votes in an uncontested election.<sup>12</sup> The Commission notes that Nasdaq explained that the process for contested elections is to remain unchanged because if a majority voting standard were to apply in a contested election, the likelihood of a "failed election" (*i.e.*, a situation in which no director receives the requisite vote) would be more pronounced.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2010-025), as modified by Amendment No. 1, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-8469 Filed 4-13-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>10</sup> 15 U.S.C. 78(b)(1).

<sup>11</sup> 15 U.S.C. 78f(b)(5).

<sup>12</sup> The Commission notes that Nasdaq represented that the proposed change would not affect NASDAQ OMX's general election requirements, specifically the voting limitations contained in NASDAQ OMX's certificate of incorporation. The Commission also notes that Nasdaq represented that if NASDAQ OMX seeks to further amend its By-Laws with respect to director elections, including the adoption of any policies and procedure with respect to such elections, it will file a proposed rule change with the Commission.

<sup>13</sup> 17 CFR 200.30-3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61866; File No. SR-ISE-2010-31]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change Relating to the Amounts That Direct Edge ECN, in Its Capacity as an Introducing Broker for Non-ISE Members, Passes Through to Such Non-ISE Members

April 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 6, 2010, the International Securities Exchange, LLC (the "Exchange" or the "ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the amounts that Direct Edge ECN ("DECN"), in its capacity as an introducing broker for non-ISE Members, passes through to such non-ISE Members.

The text of the proposed rule change is available on the Exchange's Internet Web site at <http://www.ise.com>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>6</sup> The proposed rule change incorporates a modified version of the election procedures and practices contained in the NASDAQ OMX Corporate Governance Guidelines.

<sup>7</sup> See NASDAQ OMX By-Law Article IV, Section 4.5.

<sup>8</sup> In the Notice, Nasdaq stated that NASDAQ OMX's policies and procedures pertaining to the acceptance of the resignation of its directors are specified in By-Law Article IV, Section 4.4, and that there are no additional policies and procedures other than the provisions in the By-Laws. See Notice, *supra* note 3.

<sup>9</sup> In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.<sup>3</sup> The changes made pursuant to SR-ISE-2010-29 became operative on April 5, 2010. On April 5, 2010, the ISE filed for immediate effectiveness a proposed rule change to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>4</sup> to: (i) Eliminate a rebate on EDGX for securities priced less than \$1; and (ii) to lower the removal rate on EDGX for securities priced less than \$1.<sup>5</sup> The changes made pursuant to SR-ISE-2010-29 became operative on April 5, 2010.

In its capacity as a member of ISE, DECN currently serves as an introducing broker for the non-ISE Member subscribers of DECN to access EDGX and EDGA. DECN, as an ISE Member and introducing broker, receives rebates and is assessed charges from DECN for transactions it executes on EDGX or EDGA in its capacity as introducing broker for non-ISE Members. Since the amounts of such rebates and charges were changed pursuant to SR-ISE-2010-29, DECN wishes to make corresponding changes to the amounts it passes through to non-ISE Member subscribers of DECN for which it acts as introducing broker. As a result, the per share amounts that non-ISE Member subscribers receive and are charged will be the same as the amounts that ISE Members receive and are charged.

ISE is seeking accelerated approval of this proposed rule change, as well as an effective date of April 5, 2010. ISE represents that this proposal will ensure

that both ISE Members and non-ISE Members (by virtue of the pass-through described above) will in effect receive and be charged equivalent amounts and that the imposition of such amounts will begin on the same April 5, 2010 start date.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>6</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>7</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, this proposal will ensure that dues, fees and other charges imposed on ISE Members are equitably allocated to both ISE Members and non-ISE Members (by virtue of the pass-through described above).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2010-31 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

<sup>6</sup> 15 U.S.C. 78f.

<sup>7</sup> 15 U.S.C. 78f(b)(4).

All submissions should refer to File Number SR-ISE-2010-31. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>8</sup> all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2010-31 and should be submitted on or before May 5, 2010.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>9</sup> Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(4)<sup>10</sup> of the Act, which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using its facilities.

As described more fully above, ISE recently amended DECN's fee schedule for ISE Members pursuant to SR-ISE-

<sup>8</sup> The text of the proposed rule change is available on ISE's Web site at <http://www.ise.com>, on the Commission's Web site at <http://www.sec.gov>, at ISE, and at the Commission's Public Reference Room.

<sup>9</sup> In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 15 U.S.C. 78f(b)(4).

<sup>3</sup> This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

<sup>4</sup> References to ISE Members in this filing refer to DECN Subscribers who are ISE Members.

<sup>5</sup> In SR-ISE-2010-29, the Exchange made the following changes to the fee schedule: (i) Eliminated the current rebate for adding liquidity on EDGX of 0.15% of the total dollar value of the transaction (number of shares multiplied by price) for securities priced less than \$1.00; and (ii) lowered the removal rate on EDGX for removing liquidity in securities priced less than \$1.00 from .30% of the total dollar value of the transaction to 0.10% of the total dollar value of the transaction. This was done because: (i) There was not an appropriate relationship between the size of the rebate offered and the minimum trading increment for securities priced less than \$1.00; and (2) the Exchange sought to incentivize the removal of liquidity from EDGX in securities priced less than \$1.00.

2010–29 (the “Member Fee Filing”). The fee changes made pursuant to the Member Fee Filing became operative on April 5, 2010. DECN receives rebates and is charged fees for transactions it executes on EGDx or EDGA in its capacity as an introducing broker for its non-ISE member subscribers. The current proposal, which will apply retroactively to April 5, 2010, will allow DECN to pass through the revised rebates and fees to the non-ISE member subscribers for which it acts as an introducing broker. The Commission finds that the proposal is consistent with the Act because it will provide rebates and charge fees to non-ISE member subscribers that are equivalent to those established for ISE member subscribers in the Member Fee Filing.<sup>11</sup>

ISE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice of filing thereof in the **Federal Register**. As discussed above, the proposal will allow DECN to pass through to non-ISE member subscribers the revised rebate and fees established for ISE member subscribers in the Member Fee Filing, resulting in equivalent rebates and fees for ISE member and non-member subscribers. In addition, because the proposal will apply the revised rebates and fees retroactively to April 5, 2010, the revised rebates and fees will have the same effective date, thereby promoting consistency in the DECN’s fee schedule. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>12</sup> that the proposed rule change (SR–ISE–2010–31) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>13</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010–8538 Filed 4–13–10; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61859; File No. SR–CBOE–2010–018]

### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To List and Trade CBOE Gold ETF Volatility Index Options

April 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on March 18, 2010, the Chicago Board Options Exchange, Incorporated (“Exchange” or “CBOE”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 22, 2010, CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend certain of its rules to provide for the listing and trading of options that overlie the CBOE Gold ETF Volatility Index (“GVZ”), which will be cash-settled and will have European-style exercise. The text of the rule proposal is available on the Exchange’s Web site (<http://www.cboe.org/legal>), at the Exchange’s Office of the Secretary and at the Commission.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The purpose of this proposed rule change is to permit the Exchange to list and trade cash-settled, European-style options on the CBOE Gold ETF Volatility Index (“GVZ”).

##### Index Design and Calculation:

The calculation of GVZ is based on the VIX methodology applied to options on the SPDR Gold Trust (“GLD”). The index was introduced by CBOE on August 1, 2008 and has been disseminated in real-time on every trading day since that time.<sup>4</sup>

GVZ is an up-to-the-minute market estimate of the expected volatility of GLD calculated by using real-time bid/ask quotes of CBOE listed GLD options. GVZ uses nearby and second nearby options with at least 8 days left to expiration and then weights them to yield a constant, 30-day measure of the expected (implied) volatility.

For each contract month, CBOE will determine the at-the-money strike price. The Exchange will then select the at-the-money and out-of-the money series with non-zero bid prices and determine the midpoint of the bid-ask quote for each of these series. The midpoint quote of each series is then weighted so that the further away that series is from the at-the-money strike, the less weight that is accorded to the quote. Then, to compute the index level, CBOE will calculate a volatility measure for the nearby options and then for the second nearby options. This is done using the weighted mid-point of the prevailing bid-ask quotes for all included option series with the same expiration date. These volatility measures are then interpolated to arrive at a single, constant 30-day measure of volatility.<sup>5</sup>

CBOE will compute values for GVZ underlying option series on a real-time basis throughout each trading day, from 8:30 a.m. until 3 p.m. (CT). GVZ levels will be calculated by CBOE and disseminated at 15-second intervals to major market data vendors.

##### Options Trading:

GVZ options will be quoted in index points and fractions and one point will equal \$100. The minimum tick size for series trading below \$3 will be 0.05 (\$5.00) and above \$3 will be 0.10

<sup>4</sup> CBOE maintains a micro-site for GVZ options at: <http://www.cboe.com/gvz>. See proposed amendment to Rule 24.9(a)(3).

<sup>5</sup> See proposed amendment to Interpretation and Policy .01 to Rule 24.1 (designating the Exchange as the reporting authority for GVZ).

<sup>11</sup> *Id.*

<sup>12</sup> 15 U.S.C. 78s(b)(2).

<sup>13</sup> 17 CFR 200.30–3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

<sup>3</sup> In Amendment No. 1, CBOE made technical, non-substantive corrections to the rule text.

(\$10.00). Exhibit 3 presents contract specifications for GVZ options.

The Exchange is proposing to permit 1 point or greater strike price intervals on GVZ options.<sup>6</sup> The Exchange believes that 1 point strike price intervals will provide investors with greater flexibility by allowing them to establish positions that are better tailored to meet their investment objectives.

Initially, the Exchange will list in-, at- and out-of-the-money strike prices and may open for trading up to five series above and five series below the price of the calculated forward value of GVZ, and LEAPS series. As for additional series, either in response to customer demand or as the calculated forward value of GVZ moves from the initial exercise prices of option series that have been open for trading, the Exchange may open for trading up to five series above and five series below the calculated forward value of GVZ, and LEAPS series. The Exchange will not be permitted to open for trading series with 1 point strike price intervals within 0.50 point of an existing 2.5 point strike price with the same expiration month. The Exchange will not be permitted to list LEAPS on GVZ options at strike price intervals less than 1 point.

The Exchange is proposing to add new Interpretation and Policy .14 to Rule 5.5, *Series of Option Contracts Open for Trading*, which will be an internal cross reference stating that the intervals between strike prices for GVZ option series will be determined in accordance with proposed new Interpretation and Policy .01(i) to Rule 24.9.

#### *Exercise and Settlement:*

The proposed options will typically expire on the Wednesday that is 30 days prior to the third Friday of the calendar month immediately following the expiration month (the expiration date of the options used in the calculation of the index).<sup>7</sup> If the third Friday of the calendar month immediately following the expiring month is a CBOE holiday, the expiration date will be 30 days prior to the CBOE business day immediately preceding that Friday. For example, June 2010 GVZ options would expire on Wednesday, June 16, 2010, exactly 30 days prior to the third Friday of the calendar month immediately following

the expiring month. Trading in the expiring contract month will normally cease at 3 p.m. (CT) on the business day immediately preceding the expiration date.<sup>8</sup> Exercise will result in delivery of cash on the business day following expiration. GVZ options will be A.M.-settled.<sup>9</sup> The exercise settlement value will be determined by a Special Opening Quotations ("SOQ") of GVZ calculated from the sequence of opening prices of a single strip of options expiring 30 days after the settlement date. The opening price for any series in which there are no trade shall be the average of that options' bid price and ask price as determined at the opening of trading.<sup>10</sup>

The exercise-settlement amount will be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by \$100. When the last trading day is moved because of a CBOE holiday, the last trading day for expiring options will be the day immediately preceding the last regularly-scheduled trading day.

#### *Position and Exercise Limits:*

For regular options trading, the Exchange is proposing to establish position limits for GVZ options at 50,000 contracts on either side of the market and no more than 30,000 contracts in the nearest expiration month.<sup>11</sup> CBOE believes that a 50,000 contract position limit is appropriate due to the fact that GLD options, which are the underlying components for GVZ, are among the most actively traded option classes currently listed. Industry-wide, GLD ranked as the 13th most active options class in 2009, averaging 136,000 contracts per day. On CBOE, GLD was the 12th most active options trading class in 2009, averaging over 50,000 contracts per day. In determining compliance with these proposed position limits, GVZ options will not be aggregated with GLD options. Positions in Short Term Option Series, Quarterly Options Series, and Delayed Start Option Series will be aggregated with position in options contracts in the same GVZ class. Exercise limits will be the equivalent to the proposed position

limits.<sup>12</sup> GVZ options will be subject to the same reporting requirements triggered for other options dealt in on the Exchange.<sup>13</sup>

For FLEX options trading, the Exchange is proposing that the position limits for FLEX GVZ Options will be equal to the position limits for Non-FLEX GVZ Options established pursuant to Rule 24.4.<sup>14</sup> Similarly, the Exchange is proposing that the exercise limits for FLEX GVZ Options will be equivalent to the position limits established pursuant to Rule 24.4.<sup>15</sup> The proposed position and exercise limits for FLEX GVZ Options are consistent with the treatment of position and exercise limits for other Flex Index Options. The Exchange is also proposing to add new subparagraph (4) to Rules 24A.7(d) and 24B.7(d) to provide that as long as the options positions remain open, positions in FLEX GVZ Options that expire on the same day as Non-FLEX GVZ Options, as determined pursuant to Rule 24.9(a)(5), shall be aggregated with positions in Non-FLEX GVZ Options and shall be subject to the position limits set forth in Rules 4.11, 24.4, 24.4A and 24.4B, and the exercise limits set forth in Rules 4.12 and 24.5.

#### *Exchange Rules Applicable:*

Except as modified herein, the rules in Chapters I through XIX, XXIV, XXIVA, and XXIVB will equally apply to GVZ options.

The Exchange is proposing that the margin requirements for GVZ options be set at the same levels that apply to equity options under Exchange Rule 12.3. Margin of up to 100% of the current market value of the option, plus 20% of the underlying volatility index value must be deposited and maintained. The pertinent provisions of Rule 12.3, *Margin Requirements*, have been amended to reflect these proposed revisions. Additional margin may be required pursuant to Exchange Rule 12.10.

The Exchange hereby designates GVZ options as eligible for trading as Flexible Exchange Options as provided for in Chapters XXIVA (Flexible Exchange Options) and XXIVB (FLEX Hybrid Trading System). The Exchange notes that GVZ FLEX Options will only expire on business days that non-FLEX options on Volatility Indexes expire. This is because the term "exercise settlement

<sup>8</sup> See proposed amendment to Rule 24.6, *Days and Hours of Business*.

<sup>9</sup> See proposed amendment to Rule 24.9(a)(4) (adding GVZ to the list of A.M.-settled index options approved for trading on the Exchange).

<sup>10</sup> See proposed amendment to Rule 24.9(a)(5) (adding GVZ to the provision setting forth the method of determining the day that the exercise settlement value is calculated and of determining the expiration date and the last trading day for CBOE Volatility Index Options). The Exchange is also proposing to make technical changes to this rule provision as well.

<sup>11</sup> See proposed amendment to Rule 24.4, *Position Limits for Broad-Based Index Options*.

<sup>12</sup> See Rule 24.5, *Exercise Limits*, which provides that exercise limits are equivalent to position limits.

<sup>13</sup> See Rule 4.13, *Reports Related to Position Limits*.

<sup>14</sup> See proposed amendments to Rules 24A.7 and 24B.7, *Position Limits and Reporting Requirements*.

<sup>15</sup> See proposed amendments to Rules 24A.8 and 24B.8, *Exercise Limits*.

<sup>6</sup> See proposed addition to Interpretation and Policy .01(a) of GVZ to the existing list of options for which \$2.50 strike price intervals are permitted and proposed Interpretation and Policy .01(i) to Rule 24.9 permitting \$1 strike price intervals for GVZ options.

<sup>7</sup> See proposed amendment to Rule 24.9(a)(3) (adding GVZ to list of European-style index options approved for trading on the Exchange).

value” in Rules 24A.4(b)(3) and 24B.4(b)(3), *Special Terms for FLEX Index Options*, has the same meaning set forth in Rule 24.9(5) [sic]. As is described earlier, the Exchange is proposing to amend Rule 24.9(a)(5) to provide that the exercise settlement value of GVZ options for all purposes under CBOE Rules will be calculated as the Wednesday that is thirty days prior to the third Friday of the calendar month immediately following the month in which GVZ options expire.

#### *Capacity:*

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the introduction of GVZ options.

#### *Surveillance:*

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange’s other index options to monitor trading in GVZ options. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these volatility indexes. For surveillance purposes, the Exchange will have complete access to information regarding trading activity in the pertinent underlying securities.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) <sup>16</sup> of the Act, in general, and furthers the objectives of Section 6(b)(5) <sup>17</sup> in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and thereby will provide investors with the ability to invest in options based on an additional volatility index.

### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposal.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-CBOE-2010-018 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File No. SR-CBOE-2010-018. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>18</sup> all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission’s Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-CBOE-2010-018 and should be submitted on or before May 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>19</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-8536 Filed 4-13-10; 8:45 am]

**BILLING CODE 8011-01-P**

## **SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34-61855; File No. SR-ISE-2010-26]**

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Intermarket Sweep Orders**

April 6, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 26, 2010, the International Securities Exchange, LLC (the “Exchange” or the “ISE”) filed with the Securities and Exchange Commission (the “SEC” or the “Commission”) the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>19</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>16</sup> 15 U.S.C. 78f(b).

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> The text of the proposed rule change is available on the Commission’s Web site at <http://www.sec.gov>.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt a fee and credit related to the execution of Intermarket Sweep Orders ("ISOs") by Primary Market Makers ("PMMs") on behalf of non-broker/dealer Professional Orders..[sic] The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The purpose of this proposed rule change is to adopt a fee and credit related to the execution of ISOs by PMMs on behalf of non-broker/dealer Professional Orders.<sup>3</sup>

On August 31, 2009, the Exchange implemented the new Options Order Protection and Locked/Crossed Market Plan ("Distributive Linkage") and the use of ISOs. Consistent with Distributive Linkage and pursuant to ISE rules, the Exchange's Primary Market Makers ("PMMs") have an obligation to address customer<sup>4</sup> orders when there is a better market displayed on another exchange. ISE's PMMs meet this obligation via the use of ISOs. In meeting their obligations, PMMs may incur fees when they send ISOs, especially when sending ISOs to exchanges that charge "taker" fees. To minimize the PMM's financial burden and help offset such fees, the ISE

amended its schedule of fees on October 1, 2009 to adopt a rebate for the PMM of \$0.20 per contract on all ISO orders sent to an away exchange (regardless of the fee charged by the exchange where the ISO order sent away was executed).<sup>5</sup>

The Exchange is now proposing to charge non-broker/dealer Professional Orders a fee of \$0.45 per contract for executions that result from the PMM routing ISOs to away exchanges and to provide the PMM with a credit equal to the fee charged by the destination exchange for such non-broker/dealer Professional Orders, but not more than \$0.45 per contract. Charging non-broker/dealer Professional Orders a fee to offset the charges assessed to the PMM by other exchanges for "linkage" executions is appropriate because the market professionals that are submitting non-broker/dealer Professional Orders can route directly to the away exchanges, if desired, and, therefore, should not be able to forgo the away market fee, at the expense of the PMM, by directing their orders to the ISE.<sup>6</sup> The Exchange will continue to provide the existing \$0.20 rebate to PMMs for Priority Customer Orders.<sup>7</sup>

The proposed fee changes will become operative on April 1, 2010.

(2) *Basis*—The basis under the Securities Exchange Act of 1934 (the "Act") for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. In particular, the proposed fee change will more effectively offset fees incurred by PMMs when they send ISOs to away markets.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any

unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>8</sup> and Rule 19b-4(f)(2)<sup>9</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form <http://www.sec.gov/rules/sro.shtml>; or
- Send an E-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File No. SR-ISE-2010-26 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2010-26. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public

<sup>3</sup> Pursuant to ISE Rule 100(37C), a Professional Order is an order that is for that account of a person or entity that is not a Priority Customer. Pursuant to ISE Rule 100(37A), a Priority Customer is a person or entity that is not a broker or dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account.

<sup>4</sup> Pursuant to ISE Rule 1900(f) of the Distributive Linkage rules, a customer is an individual or organization that is not a broker-dealer.

<sup>5</sup> See Securities and Exchange Act Release No. 60791 (October 5, 2009), 74 FR 52521 (October 13, 2009)(SR-ISE-2009-74).

<sup>6</sup> The Chicago Board Options Exchange ("CBOE") charges a comparable route-out fee for non-customer orders. See CBOE Fee Schedule, Item 20. See Securities Exchange Act Release No. 61701 (March 12, 2010), 75 FR 13622 (March 22, 2010)(SR-CBOE-2010-022).

<sup>7</sup> See note 3.

<sup>8</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>9</sup> 17 CFR 19b-4(f)(2).

Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ISE-2010-26 and should be submitted by May 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-8537 Filed 4-13-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61864; File No. SR-NYSEAmex-2010-36]

### Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for Professional Customers and To Make Certain Other Changes to its Options Fee Schedule

April 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 1, 2010, NYSE Amex LLC (“NYSE Amex” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. NYSE Amex has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act <sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes multiple changes to its Schedule of Fees and Charges (the “Schedule”) effective April 1, 2010. The text of the proposed rule change is attached as Exhibit 5 to the 19b-4 form. A copy of this filing is available on the Exchange's Web site at <http://www.nyse.com>, at the Exchange's principal office, the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

NYSE Amex proposes to establish fees for a new type of customer known as a Professional Customer as defined in proposed NYSE Amex rule 900.2NY(18A), effective April 1, 2010, contingent upon the approval of the Professional Customer rule filing.<sup>5</sup> This new designation will treat Professional Customers in the same manner as Broker Dealers for purposes of priority and parity. Consistent with that treatment, the Exchange is seeking to establish fees for Professional Customers that are the same as the fees charged to the execution of Broker Dealer orders. Professional Customer orders that are executed electronically will be subject to a fee of \$.20 per contract. Professional Customer orders executed in open outcry will be subject to a fee of \$.25 per contract. Professional Customer transactions in any product that has a licensing or royalty fee will be assessed that fee as well.

NYSE Amex also proposes to clarify the treatment of Professional Customer

orders as they relate to certain provisions in the Fee Schedule. For purposes of the calculation associated with the Specialist/e-Specialist/DOMM Rights Fee, Professional Customer orders will be treated as Customer orders. The Routing Surcharge will be assessed on all non-customer orders routed to away markets and on Customer orders, including Professional Customer orders, that are charged a transaction fee at another exchange. The Cancellation Fee will not apply to Professional Customer orders. Only public customer electronic orders that trade contra to a market maker will result in the collection of marketing charges under the Exchange's payment for order flow program. Broker Dealer and Professional Customer electronic orders that trade contra to a market maker will not result in the collection of marketing charges.

The Exchange proposes to restructure certain trade related charges for non-electronic trades. These trades are executed in the Firm range (clearance account “F”) and are currently billed either the Firm Facilitation rate or the Broker Dealer & Firm Manual rate. Under the current rate schedule trades by a firm that facilitate a customer, or Firm Facilitation trades, are subject to a \$.00 rate per contract. Firm transactions not facilitating a customer are subject to a \$.25 Broker/Dealer & Firm Manual rate. Under the revised rate schedule all manual trades clearing in the Firm range will be subject to a rate of \$.25 per contract, subject to tiered pricing as described below. The Exchange believes that billing all Firm Manual transactions at the same rate is a fair and equitable allocation of fees.

NYSE Amex also proposes to adopt a tiered pricing schedule applicable to Firm Proprietary manual executions on behalf of ATP holders that clear in the firm range. The tiered schedule seeks to create an incentive for executing more manual Firm Proprietary volume on the Exchange. At the same time, the Exchange proposes to reduce the fees for electronic executions for Broker Dealers and Firm Proprietary activity from \$.30 per contract to \$.20 per contract. Firm Proprietary electronic trades will now be represented as a separate line on the Schedule. Concurrently, with the implementation of tiered pricing for Firm Proprietary manual volumes, Firm Facilitation trades will be eliminated as a separate category on the fee schedule. All non-Strategy Executions currently executed as Firm Facilitation trades in open outcry or manual trades will fall under the new tiered pricing schedule and the customer side of a Firm Facilitation trade will continue to

<sup>10</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> Securities Exchange Act Release No. 61629 (March 2, 2010), 75 FR 10851 (March 9, 2010)(Notice of Filing of SR-NYSEAmex-2010-18).



remain free. The proposed pricing schedule is shown below, and is applicable to volumes executed in any calendar month. This tiered pricing schedule for Firm Proprietary executions is similar in structure to the tiered pricing currently in place at the CBOE.<sup>6</sup>

Firm proprietary manual contract volumes per month	Per contract rate
First 174,999 contracts .....	\$.25
175,000 to 299,999 contracts	.20
300,000 to 399,999 contracts	.15
400,000 to 599,999 contracts	.10
600,000 to 799,999 contracts	.05
800,000 or greater contracts	.02

Manual Broker Dealer and Firm Proprietary Strategy trades will be billed at \$.25 per contract subject to the \$750 cap per day per option class, and further capped at \$25,000 per month, per firm for all Strategy Executions. Additionally, any volumes subject to the Strategy Execution fee cap of \$750 per day per option class or the monthly cap of \$25,000 will not count towards the volume thresholds shown above. The Exchange also proposes to clarify that Flex trades are not eligible for strategy treatment.

Lastly, the Exchange is proposing a reduction in fees charged for a User Activity Extract (Batch) report. Currently, the charge for the report is \$0.0075 per trade plus any development and set up costs. The new rate will be \$0.002 per trade plus any development and set up costs.

The changes are part of the Exchange's continued effort to attract and enhance participation on the NYSE Amex options marketplace. The Exchange believes these proposed fee changes are reasonable and equitable in that they apply uniformly to all similarly situated participants on the NYSE Amex options marketplace.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the "Act"),<sup>7</sup> in general, and Section 6(b)(4) of the Act,<sup>8</sup> in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed fees are reasonable and equitable in that they apply uniformly

to all similarly situated participants on the NYSE Amex options marketplace.

## B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

## C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>9</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>10</sup> thereunder, because it establishes a due, fee, or other charge imposed by the NYSE Amex.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEAmex-2010-36 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-NYSEAmex-2010-36. This file number should be included on the subject line if e-mail is used. To help the

Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-NYSEAmex-2010-36 and should be submitted on or before May 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-8539 Filed 4-13-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61872; File No. SR-NASDAQ-2010-045]

### Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change To Extend the Last Sale Data Feeds Pilot Program

April 8, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2010, The NASDAQ Stock Market LLC ("NASDAQ" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

<sup>11</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>6</sup> See CBOE Fee Schedule dated 3/16/2010. <http://www.cboe.com/publish/feeschedule/CBOEFeeSchedule.pdf>.

<sup>7</sup> 15 U.S.C. 78f(b).

<sup>8</sup> 15 U.S.C. 78f(b)(4).

<sup>9</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>10</sup> 17 CFR 240.19b-4(f)(2).



proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is approving the proposal on an accelerated basis.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ is proposing to extend for six months the pilot, retroactively as of January 1, 2010, that created the NASDAQ Last Sale ("NLS") market data products. NLS allows data distributors to have access to real-time market data for a capped fee, enabling those distributors to provide free access to the data to millions of individual investors via the Internet and television. Specifically, NASDAQ offers the "NASDAQ Last Sale for NASDAQ" and "NASDAQ Last Sale for NYSE/Amex" data feeds containing last sale activity in U.S. equities within the NASDAQ Market Center and reported to the jointly-operated FINRA/NASDAQ Trade Reporting Facility ("FINRA/NASDAQ TRF"). The purpose of this proposal is to extend the existing pilot program for six months, retroactively as of January 1, 2010.

This pilot program supports the aspiration of Regulation NMS to increase the availability of proprietary data by allowing market forces to determine the amount of proprietary market data information that is made available to the public and at what price. During the current pilot period, the program has vastly increased the availability of NASDAQ proprietary market data to individual investors. Based upon data from NLS distributors, Nasdaq believes that since its launch in July 2008, the NLS data has been viewed by over 50,000,000 investors on websites operated by Google, Interactive Data, and Dow Jones, among others.

The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.<sup>3</sup>

\* \* \* \* \*

#### 7039. NASDAQ Last Sale Data Feeds

(a) For a six month pilot period commencing on [October] *January 1, [2009] 2010*, NASDAQ shall offer two proprietary data feeds containing real-time last sale information for trades executed on NASDAQ or reported to the NASDAQ/FINRA Trade Reporting Facility.

(1) "NASDAQ Last Sale for NASDAQ" shall contain all transaction reports for NASDAQ-listed stocks; and

(2) "NASDAQ Last Sale for NYSE/Amex" shall contain all such transaction reports for NYSE- and Amex-listed stocks.

(b) Each distributor of the NASDAQ Last Sale Data Feeds may elect between two alternate fee schedules, depending upon the choice of distributors to report usage based on either a username/password entitlement system or a quote counting mechanism or both. All fees for the NASDAQ Last Sale Data Products are "stair-stepped" in that the fees are reduced for distributors with more users but the lower rates apply only to users in excess of the specified thresholds rather than applying to all users once a threshold is met. In addition, there shall be a maximum fee of \$50,000 per month for NASDAQ Last Sale for NASDAQ and NASDAQ Last Sale for NYSE/Amex.

(1) Firms that choose to report usage for either a username/password entitlement system or quote counting mechanism or both shall elect between paying a fee for each user or a fee for each query. A firm that elects to pay for each query may cap its payment at the monthly rate per user. Firms shall pay the following fees:

(A) NASDAQ Last Sale for NASDAQ

Users/mo	Price	Query	Price
1–9,999 .....	\$0.60/usermonth .....	0–10M .....	\$0.003/query.
10,000–49,999 .....	0.48/usermonth .....	10M–20M .....	0.0024/query.
50,000–99,999 .....	0.36/usermonth .....	20M–30M .....	0.0018/query.
100,000+ .....	0.30/usermonth .....	30M+ .....	0.0015/query.

(B) NASDAQ Last Sale for NYSE/Amex

Users/mo	Price	Quotes	Price
1–9,999 .....	\$0.30/usermonth .....	0–10M .....	\$0.0015/query.
10,000–49,999 .....	0.24/usermonth .....	10M–20M .....	0.0012/query.
50,000–99,999 .....	0.18/usermonth .....	20M–30M .....	0.0009/query.
100,000+ .....	0.15/usermonth .....	30M+ .....	0.000725/query.

(2) Firms that choose not to report usage based on either a username/password entitlement system or quote counting mechanism or both may distribute NASDAQ Last Sale Data Products under alternate fee schedules depending upon whether they distribute data via the Internet or via Television:

(A) The fee for distribution of NASDAQ Last Sale Data Products via the Internet shall be based upon the

number of Unique Visitors to a website receiving such data. The number of Unique Visitors shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

(i) NASDAQ Last Sale for NASDAQ

Unique visitors	Monthly fee
1–100,000 .....	\$0.036/Unique Visitor.
100,000–1M .....	0.03/Unique Visitor.

Unique visitors	Monthly fee
1M+ .....	0.024/Unique Visitor.

(ii) NASDAQ Last Sale for NYSE/Amex

Unique visitors	Monthly fee
1–100,000 .....	\$0.018/Unique Visitor.
100,000–1M .....	0.015/Unique Visitor.

<sup>3</sup> Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at <http://nasdaqomx.cchwallstreet.com>.

Unique visitors	Monthly fee
1M+ .....	0.012/Unique Visitor.

(B) Distribution of NASDAQ Last Sale Data Products via Television shall be based upon the number of Households receiving such data. The number of Households to which such data is available shall be validated by a vendor approved by NASDAQ in NASDAQ's sole discretion.

(i) NASDAQ Last Sale for NASDAQ

Households	Monthly fee
1–1M .....	\$0.00096/Household.
1M–5M .....	0.00084/Household.
5M–10M .....	0.00072/Household.
10M+ .....	0.0006/Household.

(ii) NASDAQ Last Sale for NYSE/Amex

Households	Monthly fee
1–1M .....	\$0.00048/Household.
1M–5M .....	0.00042/Household.
5M–10M .....	0.00036/Household.
10M+ .....	0.0003/Household.

(C) A Distributor that distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms shall pay all fees applicable to each distribution mechanism, provided that there shall be a discount from the applicable Television rate as follows:

(i) 10 percent reduction in applicable Television fees when a Distributor reaches the second tier of Users, Queries, or Unique Visitors for its non-Television users;

(ii) 15 percent reduction in applicable Television fees when a Distributor reaches the third tier of Users, Queries, or Unique Visitors for its non-Television users; and

(iii) 20 percent reduction in applicable Television fees when a Distributor reaches the fourth tier of Users, Queries, or Unique Visitors for its non-Television users.

(c) All Distributors of a NASDAQ Last Sale Data Feed shall also pay a monthly fee of \$1,500.

\* \* \* \* \*

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below.

NASDAQ has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

Prior to the launch of NLS, public investors that wished to view market data to monitor their portfolios generally had two choices: (1) Pay for real-time market data or (2) use free data that is 15 to 20 minutes delayed. To increase consumer choice, NASDAQ proposed a pilot to offer access to real-time market data to data distributors for a capped fee, enabling those distributors to disseminate the data via the internet and television at no cost to millions of internet users and television viewers. NASDAQ now proposes a six-month extension of that pilot program on the same terms as applicable today.<sup>4</sup>

The NLS pilot created two separate "Level 1" products containing last sale activity within the NASDAQ market and reported to the jointly-operated FINRA/NASDAQ TRF. First, the "NASDAQ Last Sale for NASDAQ Data Product," a real-time data feed that provides real-time last sale information including execution price, volume, and time for executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF. Second, the NASDAQ Last Sale for NYSE/Amex data product that provides real-time last sale information including execution price, volume, and time for NYSE- and Amex-securities executions occurring within the NASDAQ system as well as those reported to the FINRA/NASDAQ TRF.

NASDAQ established two different pricing models, one for clients that are able to maintain username/password entitlement systems and/or quote counting mechanisms to account for usage, and a second for those that are not. Firms with the ability to maintain username/password entitlement systems and/or quote counting mechanisms will be eligible for a specified fee schedule for the NASDAQ Last Sale for NASDAQ Product and a separate fee schedule for the NASDAQ Last Sale for NYSE/Amex Product: Firms that were unable to maintain username/password entitlement systems and/or quote counting mechanisms will also have multiple options for purchasing the NASDAQ Last Sale data. These firms

chose between a "Unique Visitor" model for Internet delivery or a "Household" model for television delivery. Unique Visitor and Household populations must be reported monthly and must be validated by a third-party vendor or ratings agency approved by NASDAQ at NASDAQ's sole discretion. In addition, to reflect the growing confluence between these media outlets, NASDAQ offered a reduction in fees when a single distributor distributes NASDAQ Last Sale Data Products via multiple distribution mechanisms.

Second, NASDAQ established a cap on the monthly fee, currently set at \$50,000 per month for all NASDAQ Last Sale products. The fee cap enables NASDAQ to compete effectively against other exchanges that also offer last sale data for purchase or at no charge.

As with the distribution of other NASDAQ proprietary products, all distributors of the NASDAQ Last Sale for NASDAQ and/or NASDAQ Last Sale for NYSE/Amex products would pay a single \$1,500/month NASDAQ Last Sale Distributor Fee in addition to any applicable usage fees. The \$1,500 monthly fee will apply to all distributors and will not vary based on whether the distributor distributes the data internally or externally or distributes the data via both the internet and television.

#### 2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,<sup>5</sup> in general and with Section 6(b)(4) of the Act,<sup>6</sup> as stated above, in that it provides an equitable allocation of reasonable fees among users and recipients of NASDAQ data. In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data.

The NASDAQ Last Sale market data products proposed here appear to be precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

<sup>4</sup> NASDAQ will file a proposed rule change within thirty days seeking permanent approval of the NLS pilot.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

[E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.<sup>7</sup>

By removing “unnecessary regulatory restrictions” on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether, proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

NASDAQ’s ability to price its Last Sale Data Products is constrained by (1) competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and free delayed consolidated data, and (3) the inherent contestability of the market for proprietary last sale data.

The market for proprietary last sale data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven self-regulatory organization (“SRO”) markets, as well as broker-dealers (“BDs”) and aggregators such as the DirectEdge electronic communications network<sup>8</sup> (“ECN”). Each SRO market competes to produce transaction reports via trade executions, and an ever-increasing number of FINRA-regulated Trade Reporting Facilities (“TRFs”) compete to attract internalized transaction reports. It is common for BDs to further and

exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, and ECNs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ECN and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, Amex, NYSEArca, and BATS.

Any ECN or BD can combine with any other ECN, broker-dealer, or multiple ECNs or BDs to produce jointly proprietary data products. Additionally, non-broker-dealers such as order routers like LAVA, as well as market data vendors can facilitate single or multiple broker-dealers’ production of proprietary data products. The potential sources of proprietary products are virtually limitless.

The fact that proprietary data from ECNs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and Arca did before registering as exchanges by publishing proprietary book data on the Internet. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace writ large.

Consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at \$1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only that data which will enable them to attract “eyeballs” that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors’ pricing discipline is the same: they can simply refuse to purchase any proprietary data product that fails to provide sufficient value. NASDAQ and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to successfully market proprietary data products.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, REDIBook, Attain, TracECN, and BATS Trading. Today, BATS publishes its data at no charge on its website in order to attract order flow, and it uses market data revenue rebates from the resulting executions to maintain low execution charges for its users.<sup>9</sup> Several ECNs have existed profitably for many years with a minimal share of trading, including Bloomberg Tradebook and NexTrade.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner

<sup>7</sup> Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

<sup>8</sup> NASDAQ notes that DirectEdge recently received approval from the Commission to operate as a national securities exchange. As of this filing, however, Direct Edge continues to operate as an ECN-facility of the ISE. See Securities Exchange Act Release No. 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010).

<sup>9</sup> However, BATS has filed to begin offering and charging for three new data products, which include BATS Last Sale Feed, BATS Historical Data Products, and a data product called BATS Market Insight. See Securities Exchange Act Release No. 61592 (February 25, 2010), 75 FR 10332 (March 5, 2010).

never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, Reuters and Thomson. New entrants are already on the horizon, including "Project BOAT," a consortium of financial institutions that is assembling a cooperative trade collection facility in Europe. These institutions are active in the United States and could rapidly and profitably export the Project Boat technology to exploit the opportunities offered by Regulation NMS.

In establishing the price for the NASDAQ Last Sale Products, NASDAQ considered the competitiveness of the market for last sale data and all of the implications of that competition. NASDAQ believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish a fair, reasonable, and not unreasonably discriminatory fee and an equitable allocation of fees among all users.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. To the contrary, the NASDAQ Last Sale Products respond to and enhance competition that already exists in the market.

On May 28, 2008, the Internet portal Yahoo! announced that it would offer its Web site viewers real-time last sale data provided by BATS Trading. NASDAQ's last sale data products would compete directly with the BATS product disseminated via Yahoo!. Since that time, BATS has attracted additional purchasers of its last sale product that is free of charge or, at least, has not been the subject of a proposed rule change.

In addition, as set forth above, the market for last sale data is already competitive, with both real-time and delayed consolidated data as well as the ability for innumerable entities to begin rapidly and inexpensively to offer competitive last sale data products. Moreover, the New York Stock Exchange distributes competing last sale data products and has reduced the price of its product. Under the deregulatory regime of Regulation NMS, there is no limit to the number of competing products that can be developed quickly and at low cost. The Commission should not stand in the way of enhanced competition.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Three comment letters were filed regarding the proposed rule change as originally published for comment. NASDAQ responded to these comments in a letter dated December 13, 2007. Both the comment letters and NASDAQ's response are available on the SEC Web site at <http://www.sec.gov/comments/sr-nasdaq-2006-060/nasdaq2006060.shtml>.

#### **III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2010-045 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2010-045. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted

without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2010-045 and should be submitted on or before May 5, 2010.

#### **IV. Commission's Findings and Order Granting Accelerated Approval of a Proposed Rule Change**

The Commission finds that the proposed rule change, to extend the pilot program for three months, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>10</sup> In particular, it is consistent with Section 6(b)(4) of the Act,<sup>11</sup> which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other parties using its facilities, and Section 6(b)(5) of the Act,<sup>12</sup> which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,<sup>13</sup> which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,<sup>14</sup> adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.<sup>15</sup>

<sup>10</sup> In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

<sup>11</sup> 15 U.S.C. 78f(b)(4).

<sup>12</sup> 15 U.S.C. 78f(b)(5).

<sup>13</sup> 15 U.S.C. 78f(b)(8).

<sup>14</sup> 17 CFR 242.603(a).

<sup>15</sup> NASDAQ is an exclusive processor of its last sale data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that

The Commission approved the fee for the NASDAQ Last Sale Data Feeds for a pilot period which ran until December 31, 2009.<sup>16</sup> The Commission notes that the Exchange proposes to extend the pilot program for six months, with such extension retroactive to January 1, 2010. The Commission did not receive any comments on the previous extensions of the pilot program.<sup>17</sup>

On December 2, 2008, the Commission issued an approval order ("Order") that sets forth a market-based approach for analyzing proposals by self-regulatory organizations to impose fees for "non-core" market data products, such as the NASDAQ Last Sale Data Feeds.<sup>18</sup> The Commission believes that Nasdaq's proposal to temporarily extend the pilot program to June 30, 2010 is consistent with the Act for the reasons noted in the Order.<sup>19</sup> The Commission believes that approving NASDAQ's proposal to temporarily extend the pilot program that imposes a fee for the NASDAQ Last Sale Data Feeds for an additional three months will be beneficial to investors and in the public interest, in that it is intended to allow continued broad public dissemination of increased real-time pricing information.

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal is expected to benefit investors by continuing to facilitate their access to widespread, free, real-time pricing information contained in the NASDAQ Last Sale Data Feeds. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,<sup>20</sup> to approve the proposed rule change on an accelerated basis and retroactively to January 1, 2010.

distributes data on an exclusive basis on its own behalf.

<sup>16</sup> See Securities Exchange Act Release Nos. 60990 (November 12, 2009) 74 FR 60002 (November 19, 2009); 57965 (June 16, 2008), 73 FR 35178 (June 20, 2008) (SR-NASDAQ-2006-060); 58894 (October 31, 2008), 73 FR 66953 (November 12, 2008) (SR-NASDAQ-2008-086); 59186 (December 30, 2008), 74 FR 743 (January 7, 2009) (SR-NASDAQ-2008-103); 59652 (March 31, 2009) 74 FR 15533 (April 6, 2009) (SR-NASDAQ-2009-027); 60201 (June 30, 2009), 74 FR 32670 (July 8, 2009) (SR-NASDAQ-2009-062).

<sup>17</sup> *Id.*

<sup>18</sup> See Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data).

<sup>19</sup> See *supra* note 16.

<sup>20</sup> 15 U.S.C. 78s(b)(2).

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-NASDAQ-2010-045) is hereby approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>21</sup>

**Florence E. Harmon,**

*Deputy Secretary.*

[FR Doc. 2010-8541 Filed 4-13-10; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61869; File No. SR-ISE-2010-25]

### Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Fees and Rebates for Adding and Removing Liquidity

April 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 31, 2010, International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. ISE has designated this proposal as one establishing or changing a member due, fee, or other charge imposed under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to amend its Schedule of Fees by adopting per contract transaction fees for options overlying the PowerShares QQQ Trust ("QQQQ")<sup>®</sup>; Bank of America Corporation ("BAC") and Citigroup Inc. ("C"). The fees would apply to transactions that take and remove liquidity in the above symbols. The Exchange also proposes to offer

transaction rebates to certain market participants. The text of the proposed rule change is available on the Exchange's Web site (<http://www.ise.com>), at the principal office of the Exchange, at the Commission's Public Reference Room, and on the Commission's Web site at <http://www.sec.gov>.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The purpose of the proposed rule change is to increase liquidity and attract order flow in QQQQ, BAC and C options on the Exchange.<sup>5</sup>

###### Transaction Charges for Removing Liquidity

The Exchange proposes to assess a per contract transaction charge in QQQQ, BAC and C options to market participants that remove, or "take," liquidity from the Exchange. The per contract transaction charge would depend on the category of market participant submitting an order or quote to the Exchange that removes liquidity.<sup>6</sup>

The proposed amendment to the Exchange's Schedule of Fees identifies

<sup>5</sup> The fees proposed herein are similar to the "maker/taker" fees currently assessed by NASDAQ OMX PHLX ("PHLX"). PHLX currently charges a fee (a) for adding liquidity to the following class of market participants on that exchange: (i) Firm and (ii) Broker-Dealer; (b) for removing liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT, (iv) Firm and (v) Broker-Dealer. PHLX also provides a rebate for adding liquidity to the following class of market participants: (i) Customer, (ii) Directed Participant, (iii) Specialist, ROT, SQT and RSQT. See Securities Exchange Act Release No. 61684 (March 10, 2010), 75 FR 13189 (March 18, 2010).

<sup>6</sup> Although these options classes will no longer be subject to the tiered market maker transaction fees, the volume from these options classes will continue to be used in the calculation of the tiers so that this new pricing does not affect a market maker's fee in all other names.

<sup>21</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

the following categories of market participants: (i) Market Maker; (ii) Market Maker Plus;<sup>7</sup> (iii) Non-ISE Market Maker;<sup>8</sup> (iv) Firm Proprietary; (v) Customer (Professional);<sup>9</sup> (vi) Priority Customer;<sup>10</sup> 100 or more contracts; and (vii) Priority Customer, less than 100 contracts.<sup>11</sup>

The transaction charges to be assessed for removing liquidity in QQQQ, BAC and C options from the Exchange are: (i) \$0.25 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; (ii) \$0.35 per contract for Non-ISE Market Maker orders; (iii) \$0.20 per contract for Priority Customer orders for 100 or more contracts. Priority Customer orders for less than 100 contracts will not be assessed a fee for removing liquidity.

The transaction charges to be assessed for each leg of Complex Orders that remove liquidity in QQQQ, BAC and C options are: (i) \$0.25 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) \$0.35 per contract for Non-ISE Market Maker orders. Priority Customer Complex orders, regardless of size, will not be assessed a fee for removing liquidity.

<sup>7</sup> A Market Maker Plus is a market maker who is on the National Best Bid or National Best Offer 80% of the time in that symbol during the current trading month for series trading between \$0.03 and \$5.00 in premium. The Exchange will determine whether a market maker qualifies as a Market Maker Plus at the end of each month by looking back at each market maker's quoting statistics during that month. If at the end of the month, a market maker meets the 80% criteria, the Exchange will rebate \$0.10 per contract for transactions executed by that market maker during that month. The Exchange will provide market makers a report on a daily basis with quoting statistics so that market makers can determine whether or not they are meeting the 80% criteria.

<sup>8</sup> A Non-ISE Market Maker, or Far Away Market Maker ("FARM"), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), registered in the same options class on another options exchange.

<sup>9</sup> A Customer (Professional) is a person who is not a broker/dealer and is not a Priority Customer.

<sup>10</sup> A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

<sup>11</sup> The Chicago Board Options Exchange ("CBOE") currently makes a similar distinction between large size customer orders that are fee liable and small size customer orders whose fees are waived. CBOE currently waives fees for customer orders of 99 contracts or less in options on exchange-traded funds ("ETFs") and Holding Company Depositary Receipts ("HOLDERS") and charges a transaction fee for customer orders that exceed 99 contracts. See Securities Exchange Act Release No. 59892 (May 8, 2009), 74 FR 22790 (May 14, 2009).

## Transaction Charges for Adding Liquidity

The Exchange proposes to assess transaction charges for adding liquidity in QQQQ, BAC and C options on the Exchange, as follows: (i) \$0.10 per contracts for Market Maker, Firm Proprietary and Customer (Professional) orders; and (ii) \$0.20 per contract for Non-ISE Market Maker orders. Priority Customer orders, regardless of size, and Market Maker Plus orders will not be assessed a fee for adding liquidity.

The transaction charges to be assessed for each leg of Complex Orders that add liquidity in QQQQ, BAC and C options are: (i) \$0.10 per contract for Market Maker, Market Maker Plus, Firm Proprietary and Customer (Professional) orders; and (ii) \$0.20 per contract for Non-ISE Market Maker orders. Priority Customer Complex orders, regardless of size, will not be assessed a fee for adding liquidity.

## Rebates

In order to promote and encourage liquidity in QQQQ, BAC and C options, the Exchange proposes a \$0.10 per contract rebate for Market Maker Plus orders sent to the Exchange.<sup>12</sup> Further, in order to incentivize members to direct retail orders to the Exchange, Priority Customer Complex orders, regardless of size, will receive a rebate of \$0.15 per contract on all legs when these orders trade with non-customer orders in the Exchange's Complex Orderbook.

The fee for orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms remain unchanged from what the Exchange currently charges. Specifically, Market Maker, Market Maker Plus, Non-ISE Market Maker, Firm Proprietary and Customer (Professional) orders in QQQQ, BAC and C options entered into these mechanisms will be charged \$0.20 per contract. Priority Customer orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms, regardless of size, are not assessed a fee. The Exchange's Facilitation Mechanism has

<sup>12</sup> The concept of incenting market makers with a rebate is not novel. In 2008, the CBOE established a program for its Hybrid Agency Liaison whereby it provides a \$0.20 per contract rebate to its market makers provided that at least 80% of the market maker's quotes in a class during a month are on one side of the national best bid or offer. Market makers not meeting CBOE's criteria are not eligible to receive a rebate. See Securities Exchange Act Release No. 57231 (January 30, 2008), 73 FR 6752 (February 5, 2008). The CBOE has since lowered the criteria from 80% to 60%. See Securities Exchange Act Release No. 57470 (March 11, 2008), 73 FR 14514 (March 18, 2008).

an auction which allows for participation in a trade by members other than the member who entered the trade. Thus, to incentivize members, a rebate of \$0.15 per contract will apply to contracts that do not trade with the contra order in the Facilitation Mechanism.<sup>13</sup>

## Other Fees

- Fees for orders executed in the Exchange's Facilitation, Solicited Order, Price Improvement and Block Order Mechanisms are for contracts that are part of the originating or contra order.
- Complex orders executed in the Facilitation and Solicited Order Mechanisms are charged fees only for the leg of the trade consisting of the most contracts.
- Payment for Order Flow fees will not be collected on transactions on QQQQ, BAC and C options.<sup>14</sup>
- The Cancellation Fee will continue to apply in QQQQ, BAC and C options.<sup>15</sup>
- The Exchange has a \$0.20 per contract fee credit for members who, pursuant to Supplementary Material .02 to Rule 803, execute a transaction in the Exchange's flash auction as a response to orders from persons who are not broker/dealers and who are not Priority Customers.<sup>16</sup> For QQQQ, BAC and C options, the Exchange proposes to lower the per contract fee credit for members who execute a transaction in the Exchange's flash auction as a response

<sup>13</sup> Assume the ISE BBO and NBBO are  $0.95 \times 1.00$ . A firm enters a Facilitation order for a Customer to buy 100 contracts for \$0.98 (originating order). The Firm is the Seller (contra order). During the auction period a market maker responds to sell 40 contracts at \$0.98. At the conclusion of the auction, the Firm is allocated 60 contracts and the market maker is allocated 40 contracts. The contra order will then receive a rebate of \$0.15 per contract for the 40 contracts that did not trade with it. See e-mail from Samir Patel, Assistant General Counsel, ISE, to Johnna B. Dumler, Special Counsel, Commission, and Andrew Madar, Special Counsel, Commission, dated April 1, 2010.

<sup>14</sup> ISE currently has a payment-for-order-flow ("PFOF") program that helps the Exchange's market makers establish PFOF arrangements with an Electronic Access Member ("EAM") in exchange for that EAM preferencing some or all of its order flow to that market maker. This program is funded through a fee paid by Exchange market makers for each customer contract they execute, and is administered by both Primary Market Makers ("PMM") and Competitive Market Makers ("CMM"), depending to whom the order is preferenced.

<sup>15</sup> The Exchange assesses a Cancellation Fee of \$2.00 to EAMs that cancel at least 500 orders in a month, for each order cancellation in excess of the total number of orders such member executed that month. All orders from the same clearing EAM executed in the same underlying symbol at the same price within a 300 second period are aggregated and counted as one executed order for purposes of this fee. This fee is charged only to customer orders.

<sup>16</sup> See Securities Exchange Act Release No. 61731 (March 18, 2010), 75 FR 14233 (March 24, 2010).

to orders from persons who are not broker/dealers and who are not Priority Customers to \$0.10 per contract.

- The Exchange has a \$0.20 per contract fee for market maker orders sent to the Exchange by EAMs.<sup>17</sup> Market Maker orders sent to the Exchange by EAMs will be assessed a fee of \$0.25 per contract for removing liquidity in QQQQ, BAC and C options and \$0.10 per contract for adding liquidity in QQQQ, BAC and C options.

The Exchange has designated this proposal to be operative on April 1, 2010.

## 2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(4) that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The impact of the proposal upon the net fees paid by a particular market participant will depend on a number of variables, most important of which will be its propensity to add or remove liquidity in QQQQ, BAC and C options. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. The Exchange believes that the proposed fees it charges for options overlying QQQQ, BAC and C remain competitive with fees charged by other exchanges and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than to a competing exchange.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing of Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>18</sup> and Rule 19b-4(f)(2)<sup>19</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### *Electronic Comments*

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2010-25 on the subject line.

### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090. All submissions should refer to File Number SR-ISE-2010-25. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing

also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR-ISE-2010-25 and should be submitted on or before May 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

**Florence E. Harmon,**  
*Deputy Secretary.*

[FR Doc. 2010-8542 Filed 4-13-10; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-61865; File No. SR-ISE-2010-29]

### **Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating To Amending the Direct Edge ECN Fee Schedule**

April 7, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 5, 2010, International Securities Exchange, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### **I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend Direct Edge ECN's ("DECN") fee schedule for ISE Members<sup>3</sup> to (i) eliminate a rebate on EDGX for securities priced less than \$1; and (ii) to lower the removal rate on EDGX for securities priced less than \$1. All of the changes described herein are applicable to ISE Members. The text of the proposed rule change is available on ISE's Web site at <http://www.ise.com>, on

<sup>20</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> References to ISE Members in this filing refer to DECEN Subscribers who are ISE Members.

<sup>17</sup> See Securities Exchange Act Release No. 60817 (October 13, 2009), 74 FR 54111 (October 21, 2009).

<sup>18</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>19</sup> 17 CFR 240.19b-4(f)(2).



the Commission's Web site at <http://www.sec.gov>, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

DECN, a facility of ISE, operates two trading platforms, EDGX and EDGA.<sup>4</sup>

The Exchange is proposing to: (i) Eliminate the current rebate of 0.15% of the total dollar value of the transaction (number of shares multiplied by price) for securities priced less than \$1.00; and (ii) lower the removal rate for securities priced less than \$1 from .30% of the total dollar value of the transaction to 0.10% of the total dollar value of the transaction. This is being done because: (i) There was not an appropriate relationship between the size of the rebate offered and the minimum trading increment for securities priced less than \$1; and (2) the Exchange is seeking to incentivize the removal of liquidity from EDGX in securities priced less than \$1.00.

The changes discussed in this filing will become operative on April 5, 2010.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>5</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>6</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. ISE

notes that DECEN operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to DECEN. Finally, the Exchange believes that the proposed rates are equitable in that they apply uniformly to all Members and provide higher rebates for higher volume thresholds, resulting from lower administrative costs. ISE believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to those members that opt to direct orders to DECEN rather than competing venues.

### B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act<sup>7</sup> and Rule 19b-4(f)(2)<sup>8</sup> thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

### Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2010-29 on the subject line.

### Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-ISE-2010-29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission,<sup>9</sup> all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR-ISE-2010-29 and should be submitted on or before May 5, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>10</sup>

**Florence E. Harmon,**  
Deputy Secretary.

[FR Doc. 2010-8540 Filed 4-13-10; 8:45 am]

**BILLING CODE 8011-01-P**

<sup>4</sup> This fee filing relates to the trading facility operated by ISE and not EDGA Exchange, Inc. and EDGX Exchange, Inc. Direct Edge ECN LLC (EDGA and EDGX) will cease to operate in its capacity as an electronic communications network following the commencement of operations of EDGA Exchange, Inc. and EDGX Exchange, Inc. as national securities exchanges.

<sup>5</sup> 15 U.S.C. 78f.

<sup>6</sup> 15 U.S.C. 78f(b)(4).

<sup>7</sup> 15 U.S.C. 78s(b)(3).

<sup>8</sup> 17 CFR 240.19b-4(f)(2).

<sup>9</sup> The text of the proposed rule change is available on the Commission's Web site at <http://www.sec.gov>.

<sup>10</sup> 17 CFR 200.30-3(a)(12).



**DEPARTMENT OF STATE****[Public Notice 6927]****Suggestions for Environmental Cooperation Pursuant to the United States-Peru Environmental Cooperation Agreement**

**ACTION:** Notice of preparation of the 2011–2012 U.S.-Peru Environmental Cooperation Work Program and request for comments.

**SUMMARY:** The Department invites the public, including NGOs, educational institutions, private sector enterprises and other interested persons, to submit written comments or suggestions regarding items for inclusion in a new Work Program for implementing the United States-Peru Environmental Cooperation Agreement (ECA), which entered into force in August 2009. The ECA Work Program will focus in particular on the implementation of the Annex on Forest Sector Governance of the U.S.-Peru Trade Promotion agreement (PTPA). Please review the Annex carefully when preparing your ideas and suggestions. We also encourage submitters to refer to: (1) The Environment Chapter of the PTPA, (2) the U.S.-Peru ECA, (3) the U.S.-Peru 2009–2010 Environmental Cooperation Work Program, and (4) the Environmental Review of the PTPA. (Documents are available at: <http://www.state.gov/g/oes/env/trade/peru/index.htm>).

**DATES:** To be assured of timely consideration, all written comments or suggestions are requested no later than May 25, 2010.

**ADDRESSES:** Written comments or suggestions should be e-mailed ([trontjm@state.gov](mailto:trontjm@state.gov)) or faxed to Jacqueline Tront ((202) 647–5947), Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State, with the subject line “U.S.-Peru Environmental Cooperation Work Program.”

If you have access to the Internet and wish to make comment on this Public Notice, you may do so by going to <http://www.regulations.gov/search/Regs/home.html#home>.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline Tront, telephone (202) 647–4750, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Department of State.

**SUPPLEMENTARY INFORMATION:** In the U.S.-Peru Environmental Cooperation Agreement, the Parties (1) recognize that cooperation is a principal means to

contribute to “efforts \* \* \* to ensure that trade and environmental policies are mutually supportive and to promote the optimal use of resources in accordance with the objective of sustainable development” and (2) “establish a framework for enhancing bilateral and/or regional environmental cooperation between the Parties.” In the Environment Chapter of the PTPA (Chapter 18), the Parties likewise “recognize the importance of strengthening their capacity to protect the environment and of promoting sustainable development in concert with strengthening their trade and investment relations.” The Parties commit to “undertaking cooperative environmental activities pursuant to the ECA, including activities related to implementation of the [Environment] Chapter.” In particular, in the Environment Chapter’s Annex on Forest Sector Governance, the Parties commit to work cooperatively to implement certain actions required under the Annex, including through capacity-building and other joint initiatives to promote sustainable management of Peru’s forest resources, in accordance with the ECA.

Article III of the ECA establishes the Environmental Cooperation Commission (ECC) to coordinate and review environmental cooperation activities. The responsibilities of the ECC include developing and periodically reviewing the work program. The work program is a tool to identify and establish goals, objectives and areas for cooperation, including short-, medium- and long-term bilateral and/or regional projects and activities. The Parties also agree to take into account public comments and recommendations regarding cooperative environmental activities.

In August 2009, the Parties agreed to the 2009–2010 U.S.-Peru Environmental Cooperation Work Program. The main areas of cooperation under the 2009–2010 Work Program are: (1) Institutional and policy strengthening for effective implementation and enforcement of environmental laws, including natural resource-related laws; (2) biodiversity conservation and improved management of forests, protected areas and other ecologically important ecosystems; (3) transparency and public participation in environmental decision-making and enforcement; (4) community and market-based activities; and (5) improved environmental performance in the productive sector. The Parties agreed to focus cooperation on the capacity building activities identified in the Annex on Forest Sector Governance to ensure effective and

timely implementation of those obligations. The capacity building activities listed in the Annex include: (a) Strengthening the legal, policy, and institutional framework governing the forest estate and the international trade in forest products; (b) building institutional capacity for forest law enforcement and the international trade in forest products; (c) improving the performance of the forest concession system in meeting economic, social, and ecological objectives; and (d) increasing public participation and improving transparency in forest resource planning and management decision-making.

The United States anticipates building upon the cooperative work initiated in the 2009–2010 Work Program with a primary focus on activities related to the Annex on Forest Sector Governance. We are requesting ideas and suggestions that may be considered for inclusion in the next Work Program.

For additional information: <http://www.state.gov/g/oes/env/trade/peru/index.htm>.

**Disclaimer:** This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting of money is directly associated with this request for suggestions for the Work Program. There is no expectation of resources or funding associated with any comments or suggestions provided for the work program.

Dated: April 6, 2010.

**Willem H. Brakel,**

*Director, Office of Environmental Policy,  
Department of State.*

[FR Doc. 2010–8556 Filed 4–13–10; 8:45 am]

**BILLING CODE 4710–09–P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review**

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment

period was published on November 24, 2009 [74 FR 61405–61406].

**DATES:** Comments must be submitted on or before May 14, 2010.

**FOR FURTHER INFORMATION CONTACT:**

Shirlene Ball at the National Highway Traffic Safety Administration, Office of the Chief Information Officer, (NPO–400), 1200 New Jersey Ave., SE., W51–217, NPO 420, Washington, DC 20590. Mrs. Ball's telephone number is (202) 366–2245.

**SUPPLEMENTARY INFORMATION:**

**National Highway Traffic Safety Administration**

*Title:* Air Bag Deactivation.

*OMB Number:* 2127–0588.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* If a private individual or lessee wants to install an air bag on-off switch to turn-off either or both frontal air bags, they must complete Form OMB 2127–0588 to certify certain statements regarding use of the switch. The dealer or business must, in turn, submit the completed forms to NHTSA within seven days. The submission of the completed forms by the dealers and repair business to NHTSA, as required, will serve the agency several purposes. They will aid the agency in monitoring the number of authorization requests submitted and the pattern in claims of risk groups membership. The completed forms will enable the agency to determine whether the dealers and repair business are complying with the terms of the exemption, which include a requirement that the dealers and repair businesses accept only fully completed forms. Finally, submission of the completed forms to the agency will promote honesty and accuracy in the filling out of the forms by vehicle owners. The air bag on-off switches are installed only in vehicles in which the risk of harm needs to be minimized on a case-by-case basis.

*Affected Public:* Private individuals, fleet owners and lessees, motor vehicle dealers, repair business.

*Estimated Total Annual Burden:* 3,750 hours.

*Estimated Number of Respondents:* 7,500.

**ADDRESSES:** Send comments, within 30 days, to: Chandana Achanta, Desk Officer, Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: by fax at (202) 395–6974; by mail at Room 10235, 725–17th Street, NW., Washington, DC 20503; or at

*OIRA\_SUBMISSION@OMB.EOP.GOV.*

*Comments are invited on:* Whether the proposed collection of information

is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 6, 2010.

**Kevin Mahoney,**

*Director, Corporate Customer Services.*

[FR Doc. 2010–8488 Filed 4–13–10; 8:45 am]

**BILLING CODE 4910–59–P**

**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

[STB Docket No. AB–1043 (Sub-No. 1)]

**Montreal, Maine & Atlantic Railway, Ltd.—Discontinuance of Service and Abandonment—in Aroostook and Penobscot Counties, ME**

April 9, 2010.

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice of Public Hearing.

**SUMMARY:** The Surface Transportation will hold a public hearing concerning the abandonment application filed in this docket. The purpose of the hearing will be to allow interested persons to comment on the application.

**DATE/LOCATION:** The public hearing will take place on May 10, 2010, beginning at 9 a.m., at the District Court House, 27 Riverside Drive, Presque Isle, ME 04769. Any person wishing to speak at the hearing must file with the Board a written notice of intent to participate, identifying (1) The party represented, (2) the proposed speaker, and (3) the number of minutes requested. Notices of intent to participate should be filed as soon as possible, but not later than April 19, 2010. Following receipt of notices of intent, the Board will release a schedule of speakers for the hearing.

The courthouse is open Monday through Friday from 8 in the morning. All visitors must present a valid form of government-issued photo identification and pass screening before being granted access into the building. Cameras are not permitted in the building. Visitors will have access to public areas only.

**ADDRESSES:** Notices of intent to participate in the hearing may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the Board's <http://www.stb.dot.gov> website, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send the filing to: Surface Transportation Board, Attn: STB Docket No. AB–1043 (Sub-No. 1), 395 E Street, SW., Washington, DC 20423–0001.

**FOR FURTHER INFORMATION CONTACT:**

Joseph Dettmar, (202) 245–0395.

(Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877–8339).

**SUPPLEMENTARY INFORMATION:** On February 25, 2010, Montreal, Maine & Atlantic Railway, Ltd. (MMA) filed an application under 49 U.S.C. 10903 for authority to abandon and discontinue service over approximately 233 miles of line in Aroostook and Penobscot Counties, ME.<sup>1</sup> In a decision served on March 12, 2010, the Board granted requests to hold a public hearing.

At the hearing, the Board will hear testimony on the abandonment application. Speakers at the hearing may, but are not required to, bring written copies of their testimony to the hearing and offer those statements for the record in the proceeding. Speakers who wish to enhance their presentation by using projector-adaptable visual displays and/or handouts may do so. Any projector-adaptable visual displays must be submitted to the Board in electronic form by May 3, 2010. Interested persons should remember that they also can submit written comments on the application by April 21, 2010. Live audio/video streaming of the hearing will not be available.

This action will not significantly affect either the quality of the human

<sup>1</sup> MMA seeks authority to abandon and discontinue service over: (1) The Madawaska Subdivision, consisting of approximately 151 miles of line between milepost 109 near Millinocket and milepost 260 near Madawaska in Penobscot and Aroostook Counties; (2) the Presque Isle Subdivision, consisting of approximately 25.3 miles of line between milepost 0.0 near Squa Pan and milepost 25.3 near Presque Isle in Aroostook County; (3) the Fort Fairfield Subdivision, consisting of approximately 10 miles of line between milepost 0.0 near Presque Isle and milepost 10.0 near Easton in Aroostook County; (4) the Limestone Subdivision, consisting of approximately 29.85 miles of line between milepost 0.0 near Presque Isle and milepost 29.85 near Limestone in Aroostook County; and (5) the Houlton Subdivision, consisting of approximately 16.9 miles of line between milepost 0.0 near Oakfield and milepost 16.9 near Houlton in Aroostook County.

environment or the conservation of energy resources.

Decided: April 9, 2010.

By the Board, Rachel D. Campbell,  
Director, Office of Proceedings.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2010-8564 Filed 4-13-10; 8:45 am]

**BILLING CODE 4915-01-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

#### Intent To Prepare an Environmental Impact Statement for the South Bay Metro Green Line Extension Transit Corridor, Southwestern Portion of Los Angeles County, CA

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (LACMTA) intend to prepare an Environmental Impact Statement (EIS) for proposed transit improvements in the South Bay Metro Green Line Extension Transit Corridor. LACMTA operates the Metro transit system in Los Angeles County. The proposed project would improve mobility in southwestern Los Angeles County by introducing high-frequency transit service options; enhance the regional transit network by interconnecting existing and planned rapid transit lines such as the proposed Crenshaw/LAX Transit Corridor and the Los Angeles World Airports (LAWA) planned People Mover; provide an alternative mode of transportation for commuters who currently use the congested I-405 corridor; improve transit accessibility for residents and employees who live and/or work along the corridor; and encourage a mode shift to transit, reducing air pollution and Greenhouse Gas emissions.

The EIS will be prepared in accordance with the requirements of the National Environmental Policy Act (NEPA) and its implementing regulations. The EIS process will evaluate alternatives recommended for further study as a result of the planning Alternatives Analysis approved by the LACMTA Board on December 10, 2009 and available on the LACMTA Web site (<http://www.metro.net/southbayextension>). Pursuant to 23 CFR 771.123(j), at the conclusion of the Draft Environmental Impact Statement (DEIS) circulation period, LACMTA will

prepare a report identifying the locally preferred alternative (LPA). Prior to commencement of a Final EIS, the LPA will be adopted by the LACMTA Board and included in the Metropolitan Transportation Plan identifying sufficient Federal and other funding for the project, in order to be evaluated under the NEPA process. LACMTA does not currently anticipate applying for 43 U.S.C. 5309 New Starts funding.

LACMTA will also use the EIS document to comply with the California Environmental Quality Act (CEQA), which requires an Environmental Impact Report (EIR). The purpose of this notice is to alert interested parties regarding the intent to prepare the EIS, to provide information on the nature of the proposed project and possible alternatives, to invite public participation in the EIS process, (including providing comments on the scope of the DEIS, to announce that public scoping meetings will be conducted, and to identify participating and coordinating agency contacts.

**DATES:** Written comments on the scope of the EIS, including the project's purpose and need, the alternatives to be considered, the impacts to be evaluated, and the methodologies to be used in the evaluations should be sent to LACMTA on or before May 28, 2010 at the address below. See **ADDRESSES** below for the address to which written public comments may be sent. Public scoping meetings to accept comments on the scope of the EIS/EIR will be held on the following dates:

- Monday, April 26, 2010; 6 to 8 p.m. at the Nakano Theater, 3330 Civic Center Drive, Torrance, CA.
- Wednesday, April 28, 2010; 6 to 8 p.m. at the Perry Park Senior Center, 2308 Rockefeller Lane, Redondo Beach, CA.
- Saturday, May 1, 2010; 10 a.m. to 12 p.m. at the Lawndale City Hall, 14717 Burin Avenue, Lawndale, CA.
- Wednesday, May 5, 2010; 6 to 8 p.m. at the Automobile Driving Museum, 610 Lairport Street, El Segundo, CA.

The project's purpose and need, and the description of alternatives will be presented at these meetings. The buildings used for the scoping meetings are accessible to persons with disabilities. Any individual who requires special assistance, such as a sign language interpreter, to participate in a scoping meeting should contact Ms. Devon Cichoski, Community Relations Manager, LACMTA, at (213) 922-6446, or [cichoskid@metro.net](mailto:cichoskid@metro.net).

Scoping materials and the Alternatives Analysis will be available

at the meetings and are available on the LACMTA Web site (<http://www.metro.net/southbayextension>). Hard copies of the scoping materials may also be obtained from Ms. Devon Cichoski, Community Relations Manager, LACMTA, at (213) 922-6446, or [cichoskid@metro.net](mailto:cichoskid@metro.net). An interagency scoping meeting will be held on Tuesday, May 4, 2010, at 10 a.m. at LACMTA, in the Gateway Plaza Room, 3rd Floor, One Gateway Plaza, Los Angeles, CA 90012. Representatives of Native American tribal governments and of all federal, state, regional and local agencies that may have an interest in any aspect of the project will be invited to be participating or cooperating agencies, as appropriate.

**ADDRESSES:** Comments will be accepted at the public scoping meetings or they may be sent to Mr. Randy Lamm, Project Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop: 99-22-3, Los Angeles, CA 90012, or via e-mail at [LammR@metro.net](mailto:LammR@metro.net). The locations of the public scoping meetings are given above under **DATES**.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ray Tellis, Team Leader, Los Angeles Metropolitan Office, Federal Transit Administration, 888 South Figueroa Street, Suite 1850, Los Angeles, CA 90017, phone (213) 202-3950, e-mail [ray.tellis@dot.gov](mailto:ray.tellis@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### Scoping

Scoping is the process of determining the scope, focus, and content of an EIS. FTA and LACMTA invite all interested individuals and organizations, public agencies, and Native American Tribes to comment on the scope of the DEIS, including the project's purpose and need, the alternatives to be studied, the impacts to be evaluated, and the evaluation methods to be used. Comments should focus on: alternatives that may be less costly or have less environmental or community impacts while achieving similar transportation objectives, and the identification of any significant social, economic, or environmental issues relating to the alternatives.

NEPA "scoping" has specific and fairly limited objectives, one of which is to identify the significant issues associated with alternatives that will be examined in detail in the document, while simultaneously limiting consideration and development of issues that are not truly significant. It is in the NEPA scoping process that potentially significant environmental impacts—those that give rise to the need

to prepare an EIS—should be identified; impacts that are deemed not to be significant need not be developed extensively in the context of the impact statement, thereby keeping the statement focused on impacts of consequence. Transit projects may also generate environmental benefits; these should be highlighted as well—the impact statement process should draw attention to positive impacts, not just negative impacts.

Once the scope of the environmental study, including significant environmental issues to be addressed, is settled, an annotated outline of the document will be prepared and shared with interested agencies and the public. The outline serves at least three worthy purposes, including (1) Documenting the results of the scoping process; (2) contributing to the transparency of the process; and (3) providing a clear roadmap for concise development of the environmental document.

In the interest of producing a readable and user-friendly public document, and pursuant to 40 CFR 1502.10, the EIS shall be limited to 250 pages exclusive of any 4(f) and/or 6(f) evaluation. The EIS should emphasize graphics and virtual visual simulations over technical jargon, and technical appendices shall be included in a separate volume.

#### **Project Initiation**

The FTA and LACMTA will prepare an EIS/EIR for the South Bay Metro Green Line Extension Transit Corridor Project pursuant to 23 U.S.C. 139 and the California Environmental Quality Act (CEQA). LACMTA is serving as the local lead agency for purposes of CEQA environmental clearance, and FTA is serving as the Federal lead agency for purposes of National Environmental Policy Act (NEPA) environmental clearance. This notice shall alert interested parties to the preparation of the EIS/EIR, describe the alternatives under consideration, invite public participation in the EIS/EIR process, and announce the public scoping meetings. FTA and LACMTA will invite interested Federal, State, Tribal, regional and local government agencies to be participating agencies under the provisions of section 6002 of SAFETEA-LU.

#### **Purpose and Need for the Project**

The purpose of this project is to improve public transit service and mobility in southwestern Los Angeles County by providing reliable, high-frequency transit service along the South Bay Metro Green Line Extension Transit Corridor. In particular, the proposed project will improve mobility

between the Los Angeles International Airport (LAX) area and the South Bay. The proposed project is included in the financially constrained element of the LACMTA 2009 Long Range Transportation Plan. Various transit improvements were explored and opportunities identified in other studies such as the *Route Refinement Study Coastal Corridor Rail Transit Project South Segment* (1990), and the *South Bay Transportation Study* (1991), which are available for review at the LACMTA Transportation Library, 15th Floor, One Gateway Plaza, Los Angeles, CA 90012. Two other studies: the *South Bay Cities Railroad Study BNSF Harbor Subdivision* (2002) and the *Metro Harbor Subdivision Transit Corridor Alternatives Analysis Report* (2009) are available for review on the LACMTA Web site (<http://www.metro.net/southbayextension>).

The South Bay Metro Green Line Extension Transit Corridor is one of the many transit and highway projects to receive local Measure R funding. Additional considerations supporting the project's need include: (1) Significant concentration of activity centers and destinations throughout the project area, such as LAX, the employment/office corridor in El Segundo, the Redondo Beach South Bay Galleria, and Central Torrance's concentration of commercial and residential uses, which have a high volume of commuter activity and attract residents from within and outside of the study area; (2) the expected area population and employment growth; (3) increasing traffic congestion on the highway and arterial network throughout the project area; (4) transit-supportive General Plans in the Cities of Los Angeles, El Segundo, Lawndale, Redondo Beach, Torrance, and portions of Unincorporated Los Angeles County; (5) significant transit dependent population along the corridor; and (6) increasing travel demand that has resulted in major mobility restrictions during both peak and off-peak hours for study area residents and employees.

#### **Project Location and Environmental Setting**

The proposed project is located within the Harbor Subdivision Railroad Right-of-Way (ROW). The project area follows a North-South alignment, just west of the I-405, along the Harbor Subdivision ROW for approximately 9 miles from Century Boulevard in the north to the intersection with Crenshaw Boulevard in the south. The project area is in southwestern Los Angeles County and includes portions of nine jurisdictions: the Cities of Inglewood,

Los Angeles, El Segundo, Hawthorne, Manhattan Beach, Lawndale, Redondo Beach and Torrance, as well as the Lennox and Del Aire areas of unincorporated Los Angeles County. A variety of land uses exist within the study area, including single- and multi-family residential neighborhoods, office, commercial and warehousing districts, and industrial areas including oil fields and refineries. LAX lies to the west of the northern portion of the project area. Other existing or planned transportation facilities in the project area include: LAX People Mover to be constructed by LAWA, I-405 Freeway, planned Crenshaw/LAX Transit Corridor, Metro Green Line, proposed South Bay Regional Intermodal Transit Center at 1521 Kingsdale Avenue in the City of Redondo Beach and the proposed South Bay Regional Intermodal Transit Center—Torrance Hub at 465 Crenshaw Boulevard in the City of Torrance.

The Light Rail Transit (LRT) system alternative would begin at the current terminus of the Metro Green Line at the Redondo Beach Station and continue south along the Harbor Subdivision Right-of-Way (ROW). The Freight Track alternative would begin in the LAX area near the proposed Aviation/Century Station of the Crenshaw/LAX Line and continue south along the Harbor Subdivision ROW. Stations plus associated parking and a maintenance yard would be part of each alternative. The LRT alternative will also include traction power substations.

#### **Alternatives**

The Metro Harbor Subdivision Transit Corridor Alternatives Analysis Report (2009), prepared for LACMTA, studied a large number of transit alternatives along the entire 26-mile Harbor Subdivision railroad ROW between downtown Los Angeles, LAX and the Ports of Los Angeles and Long Beach. The South Bay Metro Green Line Extension emerged as the highest-priority project from the Alternatives Analysis, and the LACMTA Board of Directors approved the preparation of a Draft EIS/EIR in December 2009.

In addition to a No-Build Alternative, and pursuant to 40 CFR 1502.14, the Draft EIS/EIR will analyze any reasonable alternatives uncovered during scoping. The transit technologies to be evaluated for the Build Alternatives will include Light Rail Transit (LRT), Self-Propelled Rail Car (SPR), and Commuter Rail Transit (CRT) Vehicles. The four alternatives being evaluated include:

*No-Build Alternative:* The No-Build Alternative would maintain existing transit service through the year 2035. No

new transportation infrastructure would be built within the project area aside from projects currently under construction, or funded for construction and operation by 2035. This alternative will include the highway and transit projects in the current constrained element of the LACMTA Long Range Transportation Plan and the 2008 Southern California Association of Governments Regional Transportation Plan. The completion of the Metro Rapid Bus Program would be included as well as possible additional feeder bus networks to serve the region's major activity centers.

**Transportation System Management (TSM) Alternative:** The DEIS/DEIR will evaluate transportation and environmental effects of modest improvements in the highway and transit systems beyond those in the No-Build Alternative. The TSM Alternative would include low-cost improvements to the No-Build Alternative to reduce delay and enhance mobility. The TSM Alternative would emphasize transportation system upgrades, such as intersection improvements, minor road widening, traffic engineering actions, bus route restructuring, shortened bus headways, expanded use of articulated buses, reserved bus lanes, expanded park-and-ride facilities, express and limited-stop service, signalization improvements, and timed-transfer operations. The key element of the TSM Alternative is a new Metro Rapid bus route that would approximate the diagonal alignment of the Build Alternatives proposed for operation along the Harbor Subdivision ROW. The new Metro Rapid line would stop at similar locations as the Build Alternatives and include enhanced bus stops with benches, shelters, and the appropriate route information and signage. In addition, traffic signal priority would be incorporated to reduce travel times and improve reliability of service. Secondary elements of the TSM Alternative include refining existing bus routes in the study area to accommodate the new Metro Rapid line and to increase efficiencies between Metro and other Municipal Transit Operators.

**Light Rail Transit (LRT) Alternative:** This alternative would extend existing LRT service south 4.6 miles along the Harbor Subdivision ROW from the current terminus of the Metro Green Line at the Redondo Beach station to the proposed South Bay Regional Intermodal Transit Center—Torrance Hub utilizing LRT vehicle technology and infrastructure. The extension includes four new potential stations at the following locations: Manhattan

Beach Boulevard/Inglewood Avenue, the proposed South Bay Regional Intermodal Transit Center at the South Bay Galleria, Hawthorne Boulevard/190th Street, and the proposed South Bay Regional Intermodal Transit Center—Torrance Hub at Crenshaw Boulevard. Service to the LAX area would be provided by the existing Metro Green Line and future Crenshaw/LAX Transit Corridor LRT.

**Freight Track Alternative:** This alternative would provide new rail service on upgraded Harbor Subdivision railroad tracks for 8.7 miles from the intersection of Century Boulevard and Aviation Boulevard to the proposed South Bay Regional Intermodal Transit Center—Torrance Hub utilizing SPR or CRT vehicle technology and associated infrastructure. This alternative includes up to four new potential stations to be evaluated from the following list of locations: Century Boulevard and Aviation Boulevard, at the existing Metro Green Line Aviation/LAX station, at the existing Metro Green Line Douglas station, at the existing Metro Green Line Redondo Beach station, at the proposed South Bay Regional Intermodal Transit Center, and at the proposed South Bay Regional Intermodal Transit Center—Torrance Hub.

In addition to the alternatives described above, other reasonable transit alternatives identified through the public and agency scoping process will be evaluated for potential inclusion in the EIS.

#### Probable Effects

The purpose of this EIS process is to study, in a public setting, the effects of the proposed project and its alternatives on the physical, human, and natural environment. The FTA and LACMTA will evaluate all significant environmental, social, and economic impacts of the construction and operation of the proposed project. The probable impacts will be determined as part of the project scoping. Unless further screening illuminates areas of possible impact, resource areas will be limited to those uncovered during scoping. Measures to avoid, minimize, and mitigate adverse impacts will also be identified and evaluated.

#### FTA Procedures

The regulations implementing NEPA, as well as provisions of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA—LU), call for public involvement in the EIS process. Section 6002 of SAFETEA—LU requires that FTA and LACMTA do the following: (1)

Extend an invitation to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project to become “participating agencies;” (2) provide an opportunity for involvement by participating agencies and the public to help define the purpose and need for a proposed project, as well as the range of alternatives for consideration in the EIS; and (3) establish a plan for coordinating public and agency participation in, and comment on, the environmental review process. An invitation to become a participating or cooperating agency, with scoping materials appended, will be extended to other Federal and non-Federal agencies and Native American tribes that may have an interest in the proposed project. It is possible that FTA and LACMTA will not be able to identify all Federal and non-Federal agencies and Native American tribes that may have such an interest. Any Federal or non-Federal agency or Native American tribe interested in the proposed project that does not receive an invitation to become a participating agency should notify at the earliest opportunity the Project Manager identified above under **ADDRESSES**.

A comprehensive public involvement program and a Coordination Plan for public and interagency involvement will be developed for the project and posted by LACMTA on the project Web site (<http://www.metro.net/southbayextension>). The public involvement program includes a full range of activities including a public scoping process to define the issues of concern, a project web page on the LACMTA Web site, and outreach to local officials, community and civic groups, and the public. Specific activities or events for involvement will be detailed in the public involvement program.

The EIS will be prepared in accordance with NEPA and its implementing regulations issued by the Council on Environmental Quality (40 CFR parts 1500–1508) and with the FTA/Federal Highway Administration regulations “Environmental Impact and Related Procedures” (23 CFR part 771). In accordance with 23 CFR 771.105(a) and 23 CFR 774, FTA will comply with all Federal environmental laws, regulations, and executive orders applicable to the proposed project during the environmental review process to the maximum extent practicable. These requirements include, but are not limited to, the environmental and public hearing provisions of Federal transit laws (49 U.S.C. 5301(e), 5323(b), and 5324); the

project-level air quality conformity regulation of the U.S. Environmental Protection Agency (EPA) (40 CFR part 93); the Section 404(b)(1) guidelines of EPA (40 CFR part 230); the regulation implementing Section 106 of the National Historic Preservation Act (36 CFR part 800); the regulation implementing Section 7 of the Endangered Species Act (50 CFR part 402); section 4(f) of the Department of Transportation Act (23 CFR part 774); and Executive Orders 12898 on environmental justice, 11988 on floodplain management, and 11990 on wetlands.

Issued on: April 9, 2010.

**Leslie T. Rogers,**

*Regional Administrator, Region IX, Federal Transit Administration.*

[FR Doc. 2010-8529 Filed 4-13-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### Petition for Exemption From the Vehicle Theft Prevention Standard; Nissan

**AGENCY:** National Highway Traffic Safety Administration (NHTSA).  
Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the Nissan North America, Inc.'s, (Nissan) petition for exemption of the Cube vehicle line in accordance with 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541).

**DATES:** The exemption granted by this notice is effective beginning with the 2011 model year.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, West Building, W43-302, 1200 New Jersey Avenue, SE., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366-0846. Her fax number is (202) 493-0073.

**SUPPLEMENTARY INFORMATION:** In a petition dated March 2, 2010, Nissan requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the MY 2011 Nissan Cube vehicle

line. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under § 543.5(a), a manufacturer may petition NHTSA to grant exemptions for one vehicle line per model year. In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Cube vehicle line. Nissan will install its passive transponder-based, electronic immobilizer antitheft device as standard equipment on its Cube vehicle line beginning with MY 2011. Major components of the antitheft device will include a body control module (BCM), an immobilizer antenna, security indicator light, electronic immobilizer and an engine control module. Nissan will also install an audible and visible alarm system on the Cube as standard equipment. Nissan stated that activation of the immobilization device occurs when the ignition is turned to the "OFF" position and all the doors are closed and locked through the use of the key or the remote control mechanism. Deactivation occurs when all the doors are unlocked with the key or remote control mechanism. Nissan's submission is considered a complete petition as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Nissan stated that the immobilizer device prevents normal operation of the vehicle without use of a special key. Nissan further stated that incorporation of the theft warning alarm system in the device has been designed to protect the belongings within the vehicle and the vehicle itself from being stolen when the back door and all of the side doors are closed and locked. If any of the doors are unlocked through an inside door lock knob or any attempts are made to reconnect the device after it has been disconnected, the device will also activate the alarm. Nissan stated that upon alarm activation, the head lamps will flash and the horn will sound, and the alarm can only be deactivated by unlocking the driver's side door with the key or the remote control device.

In addressing the specific content requirements of 543.6, Nissan provided information on the reliability and durability of the device. Nissan stated that its antitheft device is tested for specific parameters to ensure its reliability and durability. Nissan provided a detailed list of the tests conducted and believes that the device

is reliable and durable since the device complied with its specified requirements for each test.

Nissan provided data on the effectiveness of the antitheft device installed on its Cube vehicle line in support of the belief that its antitheft device will be highly effective in reducing and deterring theft. Nissan referenced the National Insurance Crime Bureau's data which it stated showed a 70% reduction in theft when comparing the MY 1997 Ford Mustang (with a standard immobilizer) to the MY 1995 Ford Mustang (without an immobilizer). Nissan also referenced the Highway Loss Data Institute's data which reported that BMW vehicles experienced theft loss reductions resulting in a 73% decrease in relative claim frequency and a 78% lower average loss payment per claim for vehicles equipped with an immobilizer. Additionally, Nissan stated that theft rates for its Pathfinder vehicle experienced reductions from model year (MY) 2000 to 2001 with implementation of the engine immobilizer device as standard equipment and further significant reductions subsequent to MY 2001. Specifically, Nissan noted that the agency's theft rate data for MY's 2001 through 2006 reported a theft rate experience for the Nissan Pathfinder of 1.9146, 1.8011, 1.1482, 0.8102, 1.7298 and 1.3474, respectively.

In support of its belief that its antitheft device will be as effective as compliance with the parts-marking requirements in reducing and deterring vehicle theft, Nissan compared its device to other similar devices previously granted exemptions by the agency. Specifically, it referenced the agency's grant of a full exemption to General Motors Corporation for the Buick Riviera, Oldsmobile Aurora (58 FR 44872, August 25, 1993) and Cadillac Seville vehicle lines (62 FR 20058, April 24, 1997) from the parts-marking requirements of the theft prevention standard. Nissan stated that it believes that since its device is functionally equivalent to other comparable manufacturer's devices that have already been granted parts-marking exemptions by the agency such as the "PASS-Key III" device used on the 1997 Buick Park Avenue, the 1998 Cadillac Seville and, the 2000 Cadillac DeVille, Pontiac Bonneville, Buick LeSabre and Oldsmobile Aurora lines, the reduced theft rates of the "PASS-Key" and "PASS-Key II" equipped vehicle lines and the advanced technology of transponder electronic security, the Nissan immobilizer device has the potential to achieve the level of

effectiveness equivalent to the "PASS-Key III device.

Based on the supporting evidence submitted by Nissan on the device, the agency believes that the antitheft device for the Cube vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541). The agency concludes that the device will provide the five types of performance listed in § 543.6(a)(3): promoting activation; attracting attention to the efforts of unauthorized persons to enter or operate a vehicle by means other than a key; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of part 541 either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts marking requirements of part 541. The agency finds that Nissan has provided adequate reasons for its belief that the antitheft device for the Nissan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Nissan provided about its device.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the Nissan Cube vehicle line from the parts-marking requirements of 49 CFR Part 541, beginning with the 2011 model year vehicles. The agency notes that 49 CFR Part 541, Appendix A-1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR Part 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts-marking requirements of the Theft Prevention Standard.

If Nissan decides not to use the exemption for this line, it must formally notify the agency. If such a decision is

made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the anti-theft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: April 8, 2010.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 2010-8451 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Summary Notice No. PE-2010-13]

#### Petition for Exemption; Summary of Petition Received

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petition for exemption received.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary

is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number involved and must be received on or before May 4, 2010.

**ADDRESSES:** You may send comments identified by Docket Number FAA-2010-0179 using any of the following methods:

- **Government-wide rulemaking Web site:** Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- **Mail:** Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12-140, Washington, DC 20590.

- **Fax:** Fax comments to the Docket Management Facility at 202-493-2251.

- **Hand Delivery:** Bring comments to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**Privacy:** We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

**Docket:** To read background documents or comments received, go to <http://www.regulations.gov> at any time or to the Docket Management Facility in Room W12-140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Laverne Brunache (202) 267-3133 or Tyneka Thomas (202) 267-7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 8, 2010.

**Pamela Hamilton-Powell,**  
*Director, Office of Rulemaking.*

#### Petition for Exemption

*Docket No.:* FAA-2010-0179.



*Petitioner:* Carl Wischmeyer.  
*Section of 14 CFR Affected:* 14 CFR 61.23(a)(3)(i).

#### Description of Relief Sought

Mr. Carl Wischmeyer requests relief from § 61.23(a)(3)(i) to fly AirCam experimental aircraft without a medical certificate, using a valid driver's license instead.

[FR Doc. 2010-8472 Filed 4-13-10; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[Docket No. FHWA-2010-0035]

#### Proposed Memorandum of Understanding Revision (MOU) Assigning Certain Federal Environmental Responsibilities to the State of California, Including National Environmental Policy Act (NEPA) Authority for Certain Categorical Exclusions (CEs)

**AGENCY:** Federal Highway Administration (FHWA), California Division, DOT.

**ACTION:** Notice of proposed MOU, request for comments.

**SUMMARY:** This notice announces that the FHWA and the State of California, acting by and through its Department of Transportation (State), propose a time extension with minor changes to the MOU pursuant to 23 U.S.C. 326. The MOU would extend the duration of use by three years, transferring to the State the FHWA's authority and responsibility for determining whether certain designated activities within the geographic boundaries of the State, as specified in the proposed MOU, are categorically excluded from preparation of an environmental assessment or an environmental impact statement under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA). Aside from editorial changes to the MOU, the following minor changes would also be incorporated: (1) The State would be required to submit a list of CE determinations annually as opposed to quarterly; (2) the **Federal Register** notice of availability period would be modified from 45 days to 30 days, where applicable; (3) upon termination of the MOU, reversion of Federal responsibility back to FHWA would become effective in 60 days as opposed to 30 days; (4) FHWA would provide the State 24 hour notice, where practicable, prior to attending meetings whereby another Federal agency has requested FHWA's participation; (5)

removal of E.O. 13175, Consultation and Coordination with Indian Tribal Governments from the list of assigned responsibilities.

**DATES:** Please submit comments by May 14, 2010.

**ADDRESSES:** You may submit comments, identified by DOT Document Management System (DMS) Docket Number [FHWA-2010-0035], by any of the methods described below. Electronic or facsimile comments are preferred because Federal offices experience intermittent mail delays from security screening.

1. *Web site:* <http://www.regulations.gov>

Follow the instructions for submitting comments on the DOT electronic docket site.

2. *Facsimile (Fax):* 1-202-493-2251.

3. *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590.

*Hand Delivery:* 1200 New Jersey Ave., SE., Washington, DC 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

For access to the docket to view a complete copy of the proposed MOU, or to read background documents or comments received, go to <http://www.regulations.gov> at any time or to 1200 New Jersey Ave, SE, Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except for Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For FHWA: Aimee Kratovil, Federal Highway Administration, California Division, 650 Capitol Mall, Suite 4-100, Sacramento, CA 95814; by e-mail at [aimee.kratovil@dot.gov](mailto:aimee.kratovil@dot.gov) or by telephone at 916-498-5866. The FHWA California Division Office's normal business hours are 8 a.m. to 4:30 p.m. (Pacific Time), Monday-Friday, except for Federal Holidays. For State: Cindy Adams, NEPA Delegation Manager, California Department of Transportation, Division of Environmental Analysis, MS#27, P.O. Box 942874, Sacramento, CA, 94274-0001; by e-mail at [NEPA\\_delegation@dot.ca.gov](mailto:NEPA_delegation@dot.ca.gov); by telephone at (916) 653-5157. The California Department of Transportation's normal business hours are 8 a.m. to 5 p.m. (Pacific Time), Monday-Friday, except for State and Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Electronic Access

An electronic copy of this notice may be downloaded using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board

Service at (202) 512-1661. Internet users may reach the Office of the **Federal Register's** home page at <http://www.archives.gov> and the Government Printing Office's Web site at <http://www.access.gpo.gov>. An electronic version of the proposed MOU may be downloaded by accessing the DOT DMS docket, as described above, at <http://www.regulations.gov>.

#### Background

Section 6004(a) of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109-059, 119 Stat. 1144), codified as section 326 of amended Chapter 3 of title 23, United States Code (23 U.S.C. 326), allows the Secretary of the DOT (Secretary), to assign, and a State to assume, responsibility for determining whether certain designated activities are included within classes of action that are categorically excluded from requirements for environmental assessments or environmental impact statements pursuant to regulations promulgated by the Council on Environmental Quality under part 1500 of title 40, Code of Federal Regulations (CFR) (as in effect on October 1, 2003). The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The FHWA and the State had previously entered into an MOU on June 6, 2007, for an initial term of three (3) years. The proposed MOU revision is set to supersede the original MOU prior to its expiration date on June 6, 2010. Stipulation I (B) of the MOU describes the types of actions for which the State would assume project-level responsibility for determining whether the criteria for a CE are met. Statewide decision-making responsibility would be assigned for all activities within the categories listed in 23 CFR 771.117(c), those listed as examples in 23 CFR 771.117(d), and the following additional categories of actions:

1. Construction, modification, or repair of storm water treatment devices (e.g., detention basins, bio-swales, media filters, and infiltration basins), protection measures such as slope stabilization and other erosion control measures.

2. Replacement, modification, or repair of culverts or other drainage facilities.

3. Projects undertaken to assure the creation, maintenance, restoration, enhancement, or protection of habitat for fish, plants, or wildlife (e.g., revegetation of disturbed areas with native plant species; stream or river bank revegetation; construction of new, or maintenance of existing fish passage



conveyances or structures; restoration or creation of wetlands).

4. Routine repair of facilities due to storm damage, including permanent repair to return the facility to operational condition that meets current standards of design and public health and safety without expanding capacity (e.g., slide repairs, construction or repair of retaining walls).

5. Routine seismic retrofit of facilities to meet current seismic standards and public health and safety standards without expansion of capacity.

6. Air space leases subject to subpart D, part 710, Title 23, Code of Federal Regulations.

7. Drilling of test bores/soil sampling.

The scope of the assignment and terms and conditions of the assignment are contained in the MOU. A copy of the MOU, together with State documentation supporting the assignment of decision-making authority under 23 CFR 771.117(d) for the seven categories of activities listed above, may be viewed on the DOT DMS Docket, as described above, or may be obtained by contacting the FHWA or the State at the addresses provided above. A copy also may be viewed at [http://www.dot.ca.gov/hq/env/nepa\\_pilot/innindex.htm](http://www.dot.ca.gov/hq/env/nepa_pilot/innindex.htm).

The FHWA California Division, in consultation with FHWA Headquarters, will consider the comments submitted when making its decision on the proposed MOU revision. Once the FHWA makes a decision on the proposed MOU revision, the FHWA will place in the DOT DMS Docket a statement describing the outcome of the decision-making process and a copy of any final MOU. The FHWA also will publish in the **Federal Register** a notice of the FHWA decision and the availability of any final MOU. Copies of the final documents also may be obtained by contacting the FHWA or the State at the addresses provided above, or by viewing the documents at [http://www.dot.ca.gov/hq/env/nepa\\_pilot/innindex.htm](http://www.dot.ca.gov/hq/env/nepa_pilot/innindex.htm).

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

**Authority:** 23 U.S.C. 326; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Issued on: April 8, 2010.

**Karen Bobo,**

*Director, Local Programs, Federal Highway Administration, Sacramento, California.*

[FR Doc. 2010-8481 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2010-0045]

#### Receipt of Petition for Decision That Nonconforming 2006 and 2007 Mercedes Benz G-Class Long-Wheelbase MPVs Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of petition.

**SUMMARY:** The National Highway Traffic Safety Administration (NHTSA) has received a petition to decide that 2006 and 2007 Mercedes Benz G-Class (463 chassis) LWB multipurpose passenger vehicles (MPVs) that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because: (1) They are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified 2006 and 2007 Mercedes Benz G-Class (463 chassis) LWB MPV), and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is May 14, 2010.

**ADDRESSES:** Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- **Mail:** Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001
- **Hand Delivery or Courier:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- **Fax:** 202-493-2251.

**Instructions:** Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length

of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

**Privacy Act:** Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78).

**How to Read Comments submitted to the Docket:** You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at <http://www.regulations.gov>. Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

**FOR FURTHER INFORMATION CONTACT:** Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202-366-3151).

#### SUPPLEMENTARY INFORMATION:

##### Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register**

of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC, of Baltimore, Maryland (J.K.) (Registered Importer 90-006) has petitioned NHTSA to decide whether nonconforming 2006 and 2007 Mercedes Benz G-Class (463 chassis) LWB MPVs are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 2006 and 2007 Mercedes Benz G-Class (463 chassis) LWB MPVs that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 2006 and 2007 Mercedes Benz G-Class (463 chassis) LWB MPVs, to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 2006 and 2007 Mercedes Benz G-Class (463 chassis) LWB MPVs, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2006 and 2007 Mercedes Benz G-Class (463 chassis) LWB MPVs, are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Light Vehicle Brake Systems*, 139 *New Pneumatic Radial Tires for Light Vehicles*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301

*Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*:

(a) Replacement of the instrument cluster with a U.S.-model component; (b) installation or activation of the U.S.-version control and display software; and (c) installation of a U.S.-model cruise control lever.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Installation of the following U.S.-model components on vehicles that are not already so equipped: (a) Front sidemarker lamps; (b) headlamps; and (c) tail lamps with integral rear side marker lamps.

Standard No. 110 *Tire Selection and Rims and Motor Home/Recreational Vehicle Trailer Load Carrying Capacity Information for Motor Vehicles with a GVWR of 4,536 Kilograms (10,000 pounds) or Less*: Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors*: Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror on all vehicles not already so equipped.

Standard No. 114 *Theft Protection*: Installation of U.S.-version software on all vehicles not already so equipped.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems*: Installation or activation of U.S.-version software in the vehicle's computer system to meet the requirements of this standard on vehicles that do not already have this software installed or activated.

Standard No. 138 *Tire Pressure Monitoring Systems*: Inspection of all vehicles and installation of a conforming tire monitoring system on vehicles not already so equipped.

Standard No. 208 *Occupant Crash Protection*: Installation or activation of U.S.-version software to ensure that the seat belt warning system meets the requirements of this standard.

The petitioner states that the occupant crash protection systems used in these vehicles are identical to the U.S.-version with the exception of the front and rear passenger seat belt assemblies. All seat belt assemblies with the exception of the driver's seat belt assembly must be replaced with ones that meet the requirements of FMVSS No. 208 and FMVSS No. 209.

Standard No. 209 *Seat Belt Assemblies*: All seat belt assemblies with the exception of the driver's seat

belt assembly must be replaced with ones that meet the requirements of FMVSS No. 208 and FMVSS No. 209.

Standard No. 225 *Child Restraint Anchorage Systems*: Installation of U.S.-model child restraint anchorage system components that meet the requirements of FMVSS No. 225.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 8, 2010.

**Claude H. Harris,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2010-8483 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-59-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2010 0033]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TOMAHAWK.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2010-0033 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46

U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

**DATES:** Submit comments on or before May 14, 2010.

**ADDRESSES:** Comments should refer to docket number MARAD-2010-0033. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov> <http://smses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel TOMAHAWK is:

*Intended Commercial Use of Vessel:* "Day sailing charters in the San Juan Islands and multi-day trips along the coasts of British Columbia and Southeast Alaska. Our charters in B.C and AK will be combination trips that include Sailing and Skiing or Sailing and Surfing."

*Geographic Region:* "Washington and Alaska".

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

By Order of the Maritime Administrator.

Dated: April 6, 2010.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2010-8489 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2010-0034]

#### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MISS YANKEE PRIDE.

**SUMMARY:** As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket MARAD-2010-0034 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

**DATES:** Submit comments on or before May 14, 2010.

**ADDRESSES:** Comments should refer to docket number MARAD-2010-0034. Written comments may be submitted by hand or by mail to the Docket Clerk,

U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. You may also send comments electronically via the Internet at <http://www.regulations.gov> <http://smses.dot.gov/submit/>. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue, SE., Room W21-203, Washington, DC 20590. Telephone 202-366-5979.

**SUPPLEMENTARY INFORMATION:** As described by the applicant the intended service of the vessel MISS YANKEE PRIDE is:

*Intended Commercial Use of Vessel:* "river cruises and weekend charters for Maine coast."

*Geographic Region:* "Maine."

#### Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78).

By Order of the Maritime Administrator.

Dated: April 6, 2010.

**Christine Gurland,**

*Secretary, Maritime Administration.*

[FR Doc. 2010-8490 Filed 4-13-10; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### Procedures for Monitoring Bank Secrecy Act Compliance

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The proposed information collection request (ICR) described below has been submitted to the Office of

Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

**DATES:** Submit written comments on or before May 14, 2010. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at <http://www.reginfo.gov/public/do/PRAMain>.

**ADDRESSES:** Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Office of Information and Regulatory Affairs, Attention: Desk Officer for OTS, U.S. Office of Management and Budget, 725—17th Street, NW., Room 10235, Washington, DC 20503, or by fax to (202) 395–6974; and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to [infocollection.comments@ots.treas.gov](mailto:infocollection.comments@ots.treas.gov). OTS will post comments and the related index on the OTS Internet Site at [www.ots.treas.gov](http://www.ots.treas.gov). In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to [public.info@ots.treas.gov](mailto:public.info@ots.treas.gov), or send a facsimile transmission to (202) 906–7755.

**FOR FURTHER INFORMATION CONTACT:** For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, [ira.mills@ots.treas.gov](mailto:ira.mills@ots.treas.gov) (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Title of Proposal:* Procedures for Monitoring Bank Secrecy Act.

*OMB Number:* 1550–0041.

*Form Number:* N/A.

*Regulation requirement:* 12 CFR Parts 563.177 and 563.180.

*Description:* In 1970, Congress passed the Currency and Foreign Transactions Report Act commonly known as the 'Bank Secrecy Act' ("BSA"). The Money

Laundering Control Act of 1986 further augmented the BSA's effectiveness by adding interrelated sections 8(s) and 21 to the Federal Deposit Insurance Act, which applies to savings associations. Specifically, Section 1359 of the Anti-Drug Abuse Act of 1986, Public Law 99–570 ("Act"), required the former Federal Home Loan Bank Board ("FHLBB") to prescribe regulations requiring regulated institutions to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA and the U.S. Department of Treasury regulation 31 CFR part 103. The Office of Thrift Supervision ("OTS") is charged with the responsibility to examine savings association procedures periodically to ensure their effectiveness; OTS is therefore subject to the Act. See 12 CFR 563.177 and 563.180. The requirement that savings associations establish written BSA compliance procedures is a one-time event, but revisions to those procedures must occur as deemed necessary.

OTS examiners review the written procedures during examinations in order to ensure the implementation of adequate systems for complying with the BSA and its implementing regulations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 765.

*Estimated Burden Hours per*

*Response:* 40 hours.

*Estimated Frequency of Response:* Annually.

*Estimated Total Burden:* 30,600 hours.

*Clearance Officer:* Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 8, 2010.

**Ira L. Mills,**

*Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.*

[FR Doc. 2010–8471 Filed 4–13–10; 8:45 am]

**BILLING CODE 6720–01–P**

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

#### Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice

**AGENCY:** Office of Thrift Supervision (OTS), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The proposed information collection request (ICR) described below has been submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

**DATES:** Submit written comments on or before May 14, 2010. A copy of this ICR, with applicable supporting documentation, can be obtained from RegInfo.gov at <http://www.reginfo.gov/public/do/PRAMain>.

**FOR FURTHER INFORMATION CONTACT:** For further information or to obtain a copy of the submission to OMB, please contact Ira L. Mills at, [ira.mills@ots.treas.gov](mailto:ira.mills@ots.treas.gov) (202) 906–6531, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

*Title of Proposal:* Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice.

*OMB Number:* 1550–0110.

*Form Number:* N/A.

*Regulation requirement:* 12 CFR Part 570.

*Description:* The collection helps to establish standards for financial institutions relating to administrative, technical, and physical safeguards to: (1) Ensure the security and confidentiality of customer records and information; (2) protect against any anticipated threats or hazards to the security or integrity of such records; and (3) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to any customer.

A response program, of which this collection is a critical part, contains policies and procedures that enable the financial institution to: (a) Assess the situation to determine the nature and scope of the incident, and identify the information systems and types of customer information affected; (b) notify the institution's primary Federal regulator and, in accordance with applicable regulations and guidance, file a Suspicious Activity Report and notify appropriate law enforcement agencies; (c) take measures to contain and control

the incident to prevent further unauthorized access to or misuse of customer information, including shutting down particular applications or third party connections, reconfiguring firewalls, changing computer access codes, and modifying physical access controls; and (d) address and mitigate harm to individual customers.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 657.

*Estimated Burden Hours per Response:* 16 hours for developing the notice and 20 hours for notifying the customer.

*Estimated Frequency of Response:* On occasion.

*Estimated Total Burden:* 16,912 hours.

*Clearance Officer:* Ira L. Mills, (202) 906-6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: April 8, 2010.

**Ira L. Mills,**

*Paperwork Clearance Officer, Office of Chief Counsel, Office of Thrift Supervision.*

[FR Doc. 2010-8470 Filed 4-13-10; 8:45 am]

**BILLING CODE 6720-01-P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### Art Advisory Panel—Notice of Closed Meeting

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of closed meeting of Art Advisory Panel.

**SUMMARY:** Closed meeting of the Art Advisory Panel will be held in Washington, DC.

**DATES:** The meeting will be April 27–28, 2010.

**ADDRESSES:** The closed meeting of the Art Advisory Panel will be held on April 27–28, 2010, in the Appeals Media Center beginning at 9:30 a.m.,

Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** Joseph E. Bothwell, C:AP:P&V:ART, 1099 14th Street, NW., Washington, DC 20005. Telephone (202) 435-5611 (not a toll free number).

#### SUPPLEMENTARY INFORMATION:

Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., that a closed meeting of the Art Advisory Panel will be held on April 27–28, 2010, in the Appeals Media Center beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW., Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of 26 U.S.C. 6103.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7), and that the meeting will not be open to the public.

**Diane S. Ryan,**

*Chief, Appeals.*

[FR Doc. 2010-8323 Filed 4-13-10; 8:45 am]

**BILLING CODE 4830-01-P**

## TENNESSEE VALLEY AUTHORITY

[Meeting No. 10-02]

### Sunshine Act; Meeting Notice

April 16, 2010.

The TVA Board of Directors will hold a public meeting on April 16, 2010, at the TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee, to consider the matters listed below. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. Immediately following the end of the public listening session, the meeting will be called to order to consider the

agenda items listed below. **Please Note:** Speakers must pre-register online at TVA.gov or sign in before the meeting begins at 8:30 a.m. on the day of the meeting. The Board will answer questions from the news media following the Board meeting.

**STATUS:** Open.

### Agenda

#### Old Business

Approval of minutes of February 11, 2010, Board Meeting.

#### New Business

1. Chairman's Report.
2. President's Report.
3. Report of the Finance, Strategy, Rates, and Administration Committee.
  - A. Annual quote for a directly served customer
4. Report of the Operations, Environment, and Safety Committee.
5. Report of the Audit, Governance, and Ethics Committee.
  - A. Designation of Corporate Secretary
6. Report of the Community Relations and Energy Efficiency Committee.
  - A. Public auction for industrial development purposes
  - B. Land allocation zone changes
  - C. Land allocation change for Tennessee Department of Transportation I-24 interchange
  - D. Valley Investment Initiative program change

**FOR MORE INFORMATION:** Please call TVA Media Relations at (865) 632-6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632-6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: April 9, 2010.

**Maureen H. Dunn,**

*General Counsel and Secretary.*

[FR Doc. 2010-8601 Filed 4-12-10; 11:15 am]

**BILLING CODE 8120-08-P**



# Federal Register

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**Wednesday,  
April 14, 2010**

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## **Part II**

## **Environmental Protection Agency**

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**40 CFR Part 52**

**Approval and Promulgation of  
Implementation Plans; Texas; Revisions to  
the New Source Review (NSR) State  
Implementation Plan (SIP); Modification  
of Existing Qualified Facilities Program  
and General Definitions; Final Rule**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R06-OAR-2005-TX-0025; FRL-9135-7]

#### Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Modification of Existing Qualified Facilities Program and General Definitions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final Rule.

**SUMMARY:** EPA is taking final action to disapprove revisions to the SIP submitted by the State of Texas that relate to the Modification of Existing Qualified Facilities (the Qualified Facilities Program or the Program). EPA is disapproving the Texas Qualified Facilities Program because it does not meet the Minor NSR SIP requirements nor does it meet the NSR SIP requirements for a substitute Major NSR SIP revision.

EPA is also approving three definitions that are severable from the Qualified Facilities submittals. These three definitions we are approving are, “grandfathered facility,” “maximum allowable emission rate table (MAERT),” and “new facility.” Moreover, we are making an administrative correction to the SIP-approved definition of “facility.”

We are taking this action under section 110, part C, and part D of the Federal Clean Air Act (the Act or CAA).

**DATES:** This rule is effective on May 14, 2010.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2005-TX-0025. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m.

and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal, which is part of the EPA record, is also available for public inspection at the State Air Agency listed below during official business hours by appointment: Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stanley M. Spruiell, Air Permits Section (6PD-R), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7212; fax number 214-665-7263; e-mail address [spruiell.stanley@epa.gov](mailto:spruiell.stanley@epa.gov).

#### SUPPLEMENTARY INFORMATION:

Throughout this document, the following terms have the meanings described below:

- “we,” “us,” and “our” refer to EPA.
- “Act” or “CAA” means Federal Clean Air Act.
- “40 CFR” means Title 40 of the Code of Federal Regulations—Protection of Environment.
- “SIP” means State Implementation Plan as established under section 110 of the Act.
- “NSR” means new source review, a phrase intended to encompass the statutory and regulatory programs that regulate the construction and modification of stationary sources as provided under CAA section 110(a)(2)(C), CAA Title I, parts C and D, and 40 CFR 51.160 through 51.166.
- “Minor NSR” means NSR established under section 110 of the Act and 40 CFR 51.160.
- “Major NSR” means any new or modified source that is subject to NNSR and/or PSD.
- “NNSR” means nonattainment NSR established under Title I, section 110 and part D of the Act and 40 CFR 51.165.
- “PSD” means prevention of significant deterioration of air quality established under Title I, section 110 and part C of the Act and 40 CFR 51.166.
- “Program” means the SIP revision submittals from the TCEQ concerning the Texas Qualified Facilities Program.

- “NAAQS” means any national ambient air quality standard established under 40 CFR part 50.

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N. Comments on the Definition of the Term “Air Quality Account Number”

O. Comments on Whether the Qualified Facilities Rules Meet NSR Public Participation Requirements

VI. Final Action

VII. Statutory and Executive Order Reviews

## I. What Action Is EPA Taking?

EPA is taking final action to disapprove the Texas Qualified Facilities Program, as submitted by Texas on March 13, 1996, and July 22, 1998, in Title 30 of the Texas Administrative Code (30 TAC) at 30 TAC Chapter 116—Control of Air Pollution by Permits for New Construction or Modification. This includes the following regulations under Chapter 116: 30 TAC 116.116(e), 30 TAC 116.117, 30 TAC 116.118, and the following definitions under 30 TAC 116.10—General Definitions: 30 TAC 116.10(1)—definition of “actual emissions,” 30 TAC 116.10(2)—definition of “allowable emissions,” 30 TAC 116.10(11)(E) under the definition of “modification of existing facility,” and 30 TAC 116.10(16)—definition of “qualified facility.” These regulations and definitions do not meet the requirements of the Act and EPA’s NSR regulations. It is EPA’s position that none of these identified elements for the submitted Qualified Facilities Program is severable from each other.

Secondly, in an action separate from the above action on the submitted Texas Qualified Facilities Program, we are approving the following severable definitions: 30 TAC 116.10(8)—definition of “grandfathered facility,” 30 TAC 116.10(10)—definition of “maximum allowable emission rate table (MAERT),” and 30 TAC 116.10(12)—definition of “new facility.” It is EPA’s position that these definitions are severable from those in the submitted Texas Qualified Facilities Program; moreover, each is severable from each other.

EPA proposed the above actions on September 23, 2009 (74 FR 48450). We accepted comments from the public on this proposal from September 23, 2009, until November 23, 2009. A summary of the comments received and our evaluation thereof is discussed in section V below. In the proposal and in the Technical Support Document (TSD), we described our basis for the actions identified above. The reader should refer to the proposal, the TSD, section IV of this preamble, and the Response to Comments in section V of this

preamble for additional information relating to our final action.

We are disapproving the submitted Texas Qualified Facilities Program as not meeting the requirements for a substitute Major NSR SIP revision. Our grounds for disapproval as a substitute Major NSR SIP revision include the following:

- It is not clearly limited to Minor NSR thereby allowing major modifications to occur without a Major NSR permit;
- It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing changes at existing facilities to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;
- It does not require that first an applicability determination be made whether the modification is subject to Major NSR thereby exempting new major stationary sources and major modifications from the EPA Major NSR SIP requirements;
- It does not include a demonstration from the TCEQ, as required by 40 CFR 51.166(a)(7)(iv), showing how the use of “modification” is at least as stringent as the definition of “modification” in the EPA Major NSR SIP program
- It does not include the requirement to make Major NSR applicability determinations based on actual emissions and on emissions increases and decreases (netting) that occur within a major stationary source;
- It fails to meet the statutory and regulatory requirements for a SIP revision;
- It is not consistent with applicable statutory and regulatory requirements as interpreted in EPA policy and guidance on SIP revisions; and
- EPA lacks sufficient available information to determine that the requested relaxation to the Texas Major NSR SIP will not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP), or any other applicable requirement of the Act.

In addition to the failures to protect Major NSR SIP requirements, EPA cannot find that the submitted Program, as an exemption to the State’s Minor NSR SIP program, will ensure noninterference with NAAQS attainment, and there will not be a violation of applicable portions of a Texas SIP control strategy, as required by section 110(a)(2)(D) and 40 CFR 51.160(a)–(b). EPA cannot approve the exempting of certain modifications from obtaining a Minor NSR SIP permit as

part of the Texas Minor NSR SIP because the Act and EPA regulations are not met and the State has not shown that the sources will have only a *de minimis* effect. The Program fails to include legally enforceable procedures to ensure that the State will not permit a modification that will violate the control strategies or interfere with NAAQS attainment. Our grounds for disapproval as a Minor NSR SIP revision include the following:

- It is not clearly limited to Minor NSR thereby allowing major modifications to occur without a Major NSR permit;
- It has no regulatory provisions clearly prohibiting the use of this Program from circumventing the Major NSR SIP requirements thereby allowing sources to avoid the requirement to obtain preconstruction permit authorizations for projects that would otherwise require a Major NSR preconstruction permit;
- It does not require that first an applicability determination be made whether the modification is subject to Major NSR thereby exempting new major stationary sources and major modifications from the EPA Major NSR SIP requirements;
- It fails to meet the statutory and regulatory requirements for a SIP revision;
- It is not consistent with applicable statutory and regulatory requirements as interpreted in EPA policy and guidance on SIP revisions;
- It is not an enforceable Minor NSR permitting program;
- It lacks legally enforceable safeguards to ensure that the exempted changes will not violate a Texas control strategy and will not interfere with NAAQS attainment;
- EPA lacks sufficient available information to determine that the requested relaxation to the Texas Minor NSR SIP will not interfere with any applicable requirement concerning attainment and RFP, or any other applicable requirement of the Act.

The provisions in these submittals relating to the Texas Qualified Facilities State Program that include the Chapter 116 regulatory provisions and the nonseverable definitions in the General Definitions were not submitted to meet a mandatory requirement of the Act. Therefore, this final action to disapprove the submitted Texas Qualified Facilities State Program does not trigger a sanctions or Federal Implementation Plan clock. *See* CAA section 179(a).



## II. What Submittals Is EPA Taking No Action On?

### A. Subparagraph (F) Under the Definition of “Federally Enforceable”

On September 18, 2002 (67 FR 58697), EPA approved the definition of “federally enforceable” in 30 TAC 116.10(7), introductory paragraph and subparagraphs (A) through (E), as submitted July 22, 1998. We proposed to take no action on the submitted severable new subparagraph (F) under the SIP-approved definition of “federally enforceable,” submitted September 11, 2000, because it is outside the scope of the SIP. *See* 74 FR 48450, at 48466. EPA is not finalizing action today on the proposal concerning the submitted 30 TAC 116.10(7)(F). This subparagraph (F) is severable from the final rulemaking on the Qualified Facilities Program

### B. Definition of “Best Available Control Technology (BACT)”

On September 23, 2009, EPA proposed to disapprove the definition “best available control technology (BACT)” under 30 TAC 116.10(3). 74 FR 48450, at 48463–48464. EPA is still reviewing approvability of this definition; therefore, we are not taking final action on the proposal today. This definition is severable from the final rulemaking on the Qualified Facilities Program. We will take final action on the definition of BACT when we take action on Texas’s submission concerning NSR Reform (Rule Project Number 2005–010–116–PR), which also addresses BACT. *See* 74 FR 48450, at 48472.<sup>1</sup> Under the Consent Decree entered on January 21, 2010 in *BCCA Appeal Group v. EPA*, Case No. 3:08–cv–01491–N (N.D. Tex.), EPA’s final action concerning NSR Reform will be finalized by August 31, 2010.

### C. Subparagraphs (A) and (B) of the Submitted Definition of “Modification of Existing Facility”

Also, on September 23, 2009, EPA proposed to disapprove 30 TAC 116.10(11) subparagraphs (A) and (B) of the submitted definition of “modification of existing facility,” which are severable from the other submissions addressed in this notice but not severable from each other. 74 FR 48450, at 48464–48465. EPA is not taking final action today on the proposed disapproval of these

submitted subparagraphs under the submitted definition of “modification of existing facility” at 30 TAC 116.0(11)(A) and (B). We are still reviewing the proposed disapproval of these subparagraphs 30 TAC 116.10(11)(A) and (B) which relate to “insignificant increases.” These subparagraphs are severable from this final rulemaking on the Qualified Facilities Program. We will take final action on 30 TAC 116.10(11)(A) and (B) when we act on Texas’s submission concerning Air Permits (SB 766) Phase II (Rule Project Number 99029B–116–A1). Under the Settlement Agreement in *BCCA Appeal Group v. EPA*, Case No. 3:08–cv–01491–N (N.D. Tex.), that action will be finalized by December 31, 2012. Additionally, we have received petitions requesting EPA review of the State’s implementation of Texas Commission on Environmental Quality’s (TCEQ) permit by rule (PBR) program under Subchapter K (30 TAC Chapter 106).<sup>2</sup> EPA intends to review TCEQ’s PBR program and its implementation in response to those petitions.

### D. Subparagraph (G) of the Submitted Definition of “Modification of Existing Facility”

On September 23, 2009, EPA proposed to disapprove the subparagraph (G) at 30 TAC 116.10(11) of the submitted definition of “modification of existing facility.” *See* 74 FR 48450, at 48465. EPA is not taking final action today on the proposed disapproval of the submitted subparagraph (G) of the definition of “modification of existing facility.” We are still reviewing the proposed disapproval of this definition. This subparagraph states that changes to certain natural gas processing, treating, or compression facilities are not modifications if the change does not result in an annual emissions rate of any air contaminant in excess of the volume emitted at the maximum design capacity for grandfathered facilities. This definition is severable from this rulemaking on the Qualified Facilities Program. *See* 74 FR 48450, at 48452. We will take final action on 30 TAC 116.10(11)(G) when we act on Texas’s submission concerning Air Permits (SB 766) Phase II (Rule Project Number

99029B–116–A1). Under the Settlement Agreement in *BCCA Appeal Group v. EPA*, Case No. 3:08–cv–01491–N (N.D. Tex.), that action will be finalized by December 31, 2012.

### E. Trading Provision in 30 TAC 116.116(f)

EPA proposed to take no action on the submitted portion of 30 TAC 116.116(f) that includes, among other things, a trading provision containing a cross-reference that is no longer in Texas’s rules. *See* 74 FR 48450, at 48465–48466. EPA is not taking final action today on this submitted portion because we are still reviewing approvability of the provision. This portion of the provision is severable from this rulemaking on the Qualified Facilities Program. We will take final action on 30 TAC 116.116(f) when we take action on Texas’s submission concerning NSR Rules Revisions; 112(g) Revisions (Rule Project No. 98001–116–A1). Under the Settlement Agreement in *BCCA Appeal Group v. EPA*, Case No. 3:08–cv–01491–N (N.D. Tex.), that action will be finalized by October 31, 2011.

## III. What Is the Background?

### A. Summary of Our Proposed Action

Also on September 23, 2009 (74 FR 48450), EPA proposed to disapprove revisions to the SIP submitted by the State of Texas that relate to the Modification of Qualified Facilities. These affected provisions include regulatory provisions at 30 TAC 116.116(e) and definitions of “actual emissions,” “allowable emissions,” a nonseverable portion of the definition at subparagraph (E) of “modification of existing facility,” and “qualified facility” under Texas’s General Definitions in Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. *See* 30 TAC 116.10(1), (2), (11)(E), and (16), respectively. EPA finds that these submitted provisions and definitions in the submittals affecting the Texas Qualified Facilities Program are not severable from each other.

In the September 23, 2009, EPA also proposed to take action on revisions to the SIP submitted by Texas that relate to the General Definitions in Chapter 116. EPA proposed to approve three of these submitted definitions, “grandfathered facility,” “maximum allowable emissions rate table (MAERT),” and “new facility” at 30 TAC 116.10(8), (10), and (12), respectively. These definitions are severable from the Qualified Facilities Program.

EPA proposed to make an administrative correction to the severable submittal for the SIP-approved

<sup>1</sup> EPA made this determination in a separate proposed action published at 74 FR 48467, September 23, 2009. This proposal relates to Prevention of Significant Deterioration (PSD), Nonattainment NSR (NNSR) for the 1997 8-Hour Ozone Standard, NSR Reform, and a Standard Permit.

<sup>2</sup> Petitions, August 28, 2008, from the Environmental Integrity Project on behalf of the Galveston-Houston Association for Smog Prevention, Environmental Integrity Project, Texas Campaign for the Environment, Sierra Club, and Public Citizen; and January 5, 2009, supplementing the August 28, 2008, petition (the supplemental petition added the Environmental Defense Fund as an additional petitioner).

definition of “facility” under 30 TAC 116.10(6). Consistent with our proposal, EPA is finalizing this administrative correction in today’s action. Specifically, EPA corrects a typographical error at 72 FR 49198 (August 28, 2007), to clarify that the definition of “facility,” as codified at 30 TAC 116.10(6), was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. 74 FR 48450, at 48465.

See Sections I and IV for further information on EPA’s final action on the above submittals.

Further, EPA proposed to disapprove the following severable definitions: (1) the submitted definition of “best available control technology (BACT)”

and (2) subparagraphs (A) and (B) of the submitted definition of “modification of existing facility,” which are severable from the other submissions but not severable from each other, and (3) subparagraph (G) of the submitted definition of “modification of existing facility.” EPA proposed to take no action on the severable submitted subparagraph (F) for the SIP-approved severable definition of “federally enforceable” under 30 TAC 116.10(7) because the submitted paragraph relates to a federal program that is implemented separately from the SIP. In addition, EPA proposed to take no action on the severable submitted portion of a provision at 30 TAC

116.116(f) that includes, among other things, a trading provision containing a cross-reference that no longer is in Texas’s rules. See Section II for further information on why EPA is not taking final action today on these submittals.

#### *B. Summary of the Submittals Addressed in this Final Action*

Table 1 below summarizes the changes that are in the SIP revision submittals. A summary of EPA’s evaluation of each section and the basis for this action is discussed in Sections IV through VI of this preamble. The Technical Support Document includes a detailed evaluation of the submittals.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION.

Section	Title	Submittal dates	Description of change	Proposed action
30 TAC 116.10 .....	General Definitions			
30 TAC 116.10(1) .....	Definition of “actual emissions”.	3/13/1996	Added new definition .....	Disapproval.
		7/22/1998	Repealed and a new definition submitted as paragraph (1).	
30 TAC 116.10(2) .....	Definition of “allowable emissions”.	3/13/1996	Added new definition .....	Disapproval.
		7/22/1998	Repealed and a new definition submitted as paragraph (2).	
		9/11/2000	Revised paragraphs (2)(A) through (D).	
30 TAC 116.10(6) .....	Definition of “facility” .....	3/13/1996	Added new definition .....	Administrative correction to clarify the definition of “facility” is in the SIP.
		7/22/1998	Repealed and a new definition submitted as paragraph (4). Approved 9/6/2006 (71 FR 52698).	
		9/4/2002	Redesignated to paragraph (6). Inadvertently identified as non-SIP provision in 8/28/2007 SIP revision.	
30 TAC 116.10(8) .....	Definition of “grandfathered facility”.	3/13/1996	Added new definition .....	Approval.
		7/22/1998	Repealed and a new definition submitted as paragraph (6).	
		7/31/2002	Revised definition.	
30 TAC 116.10(10) .....	Definition of “maximum allowable emission rate table”.	9/4/2002	Redesignated to paragraph (8).	
		3/13/1996	Added new definition .....	Approval.
		7/22/1998	Repealed and a new definition submitted as paragraph (8).	
		9/4/2002	Redesignated to paragraph (10).	
30 TAC 116.10(11) .....	Definition of “modification of existing facility”.	3/13/1996	Added new definition .....	Disapproval of subparagraph (E).
		7/22/1998	Repealed and a new definition submitted as paragraph (9).	
		9/4/2002	Redesignated to paragraph (11).	
30 TAC 116.10(12) .....	Definition of “new facility” ...	3/13/1996	Added new definition .....	Approval.
		7/22/1998	Repealed and a new definition submitted as paragraph (10).	
		9/04/2002	Redesignated to paragraph (12).	
30 TAC 116.10(16) .....	Definition of “qualified facility”.	3/13/1996	Added new definition .....	Disapproval.
		7/22/1998	Repealed and a new definition submitted as paragraph (14).	
		9/4/2002	Redesignated to paragraph (16).	
30 TAC 116.116 .....	Changes to Facilities .....	3/13/1996	Added subsection (e) .....	Disapproval.
		7/22/1998	Repealed and a new 116.116(e) submitted.	Disapproval.

TABLE 1—SUMMARY OF EACH SIP SUBMITTAL THAT IS AFFECTED BY THIS ACTION.—Continued

Section	Title	Submittal dates	Description of change	Proposed action
30 TAC 116.117 .....	Documentation and Notification of Changes to Qualified Facilities.	3/13/1996	Added new section .....	Disapproval.
		7/22/1998	Repealed and a new 116.117 re-submitted.	
30 TAC 116.118 .....	Pre-Change Qualification ....	3/13/1996	Added new section .....	Disapproval.
		7/22/1998	Repealed and a new 116.118 submitted.	

#### *C. Other Proposed Relevant Actions on the Texas Permitting SIP Revision Submittals*

The Settlement Agreement in *BCCA Appeal Group v. EPA*, Case No. 3:08–cv–01491–N (N.D. Tex), as amended, currently provides that EPA will take final action on the State's Public Participation SIP revision submittal on October 29, 2010. EPA intends to take final action on the submitted Texas Flexible Permits State Program by June 30, 2010, and the NSR SIP by August 31, 2010, as provided in the Consent Decree entered on January 21, 2010 in *BCCA Appeal Group v. EPA*, Case No. 3:08–cv–01491–N (N.D. Tex).

Additionally, EPA acknowledges and appreciates that TCEQ is developing a proposed rulemaking package to address EPA's concerns with the current Qualified Facilities rules. We will, of course, consider any rule changes if and when they are submitted to EPA for review. However, the rules before us today are those of the current Qualified Facilities program, and we have concluded that the current program is not approvable for the reasons set out in this notice.

#### **IV. What Are the Grounds for This Disapproval Action of the Texas Qualified Facilities Program?**

EPA is disapproving revisions to the SIP submitted by the State of Texas that relate to the Modification of Qualified Facilities, identified in the above Table 1. Sources are reminded that they remain subject to the requirements of the Federally- approved Texas SIP and may be subject to enforcement actions for violations of the SIP. *See* EPA's Revised Guidance on Enforcement During Pending SIP Revisions, (March 1, 1991). However, because the Qualified Facilities Program is a permitting exemption, not a permit amendment, this final disapproval action does not affect Federal enforceability of Major and Minor NSR SIP permits.

The provisions affected by this disapproval action include regulatory

provisions at 30 TAC 116.116(e), 116.117, and 116.118; and definitions at 30 TAC 116.10(1), (2), (11)(E), and (16) under 30 TAC Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. EPA finds that these submitted provisions and definitions in the submittals affecting the Texas Qualified Facilities Program are not severable from each other. Specifically, EPA is making the following findings and taking the following actions as described below:

##### *A. Why the Qualified Facilities Program Submittal Is Unclear Whether It Is for a Major or Minor NSR SIP Revision*

While the TCEQ and other commenters asserted that the program was intended to be limited to Minor NSR, we continue to be concerned that the program is not explicitly limited to Minor NSR. Specifically, EPA finds that the submittals contain no applicability statement or regulatory provision that limits applicability to minor modifications. The Program is analogous to two other Minor NSR programs in Texas's SIP because although they do not exempt facilities from NSR, as does the Qualified Facilities Program, they do exempt facilities from obtaining source-specific (*i.e.*, case-by-case) permits. However, both of the State's other Minor NSR programs include an applicability statement and a regulatory provision that expressly limits applicability to minor modifications.<sup>3</sup> Moreover, the Texas Clean Air Act clearly prohibits the use of these two other Minor NSR programs for Major NSR. *See* Texas Health and Safety Code 382.05196 and .057. Therefore, the absence of these provisions in the Qualified Facilities rules creates an unacceptable ambiguity in the SIP. Without a clear statement of applicability of the Program, the

<sup>3</sup> The Standard Permits rules require a Major NSR applicability determination at 30 TAC 116.610(b), and prohibit circumvention of Major NSR at 30 TAC 116.610(c). Likewise, the Permits by Rule provisions require a Major NSR applicability determination at 30 TAC 106.4(a)(3), and prohibit circumvention of Major NSR at 30 TAC 106.4(b).

Program as submitted is confusing to the public, regulated sources, government agencies, or a court, because it can be interpreted as an alternative to evaluating the new modification as a major modification under Major NSR requirements. Because of the overbroad nature of the regulatory language in the State's SIP revision submittal, we find that the State has failed to limit its submitted Program only to Minor NSR. *See* 74 FR 48450, at 48456–48457 and Section V.E.1 below for further information.

Consequently, we evaluated this submitted Program as being a substitute for the Texas Major NSR SIP. We also evaluated it for approvability as a Minor NSR SIP. Accordingly, we evaluated whether the submitted Program meets the requirements for a Major NSR SIP revision, the general requirements for regulating construction of any stationary sources contained in Section 110(a)(2)(C) of the CAA, and the applicable statutory and regulatory requirements for an approvable SIP revision. *See* 74 FR 48450, at 48457.

##### *B. Why the Submitted Texas Qualified Facilities Program Is Not Approvable as a Substitute Major NSR SIP Revision*

EPA finds that the State failed to submit information sufficient to demonstrate that the submitted Program's regulatory text explicitly prevents the circumvention of Major NSR. Therefore, EPA is disapproving the Program as not meeting the Major NSR SIP requirements to prevent circumvention of Major NSR. *See* 74 FR 48450, at 48458; Sections V.C.2. and E. below for further information.

EPA finds that the State failed to submit information sufficient to demonstrate that the submitted Program's regulatory text requires an evaluation of Major Source NSR applicability before a change is exempted from permitting. Therefore, EPA is disapproving the Program as not meeting the Major NSR SIP requirements that require the Major NSR applicability requirements be met. *See*

74 FR 48450, at 48458; Section V.C.2 below for further information.

We find that the Program is deficient for Major NSR netting for two main reasons. First, the Program may allow an emission increase to net out by taking into account emission decreases outside of the major stationary source and, in other circumstances, allow an evaluation of emissions of a subset of units at a major stationary source. Therefore, the Program does not meet the CAA's definition of "modification" and the Major NSR SIP requirements and is inconsistent with *Alabama Power v. Costle*, 636 F.2d 323, 401–403 (DC Cir. 1980) and *Asarco v. EPA*, 578 F.2d 320 (DC Cir. 1978). 74 FR 48450, at 48458–48459; Section V.C.1 below. Second, the Program authorizes existing allowable emissions, rather than actual emissions, to be used as a baseline to determine applicability. This use of allowables is inconsistent with the requirements of the Act for Major NSR and is contrary to *New York v. EPA*, 413 F.3d 3, 38–40 (DC Cir. 2005) ("New York I"). 74 FR 48450, at 48459; Section V.C.1 below.

EPA finds that it lacks sufficient available information to determine, pursuant to section 110(l) that the requested relaxation to the Texas NSR SIP would not interfere with any applicable requirement concerning attainment and RFP, or any other applicable CAA requirement. See 74 FR 48450, at 48459 for further information.

#### *C. Why the Submitted Texas Qualified Facilities Program Is Not Approvable as a Minor NSR SIP Revision*

EPA finds that the Program is not clearly limited to Minor NSR. The submitted Program also does not prevent circumvention of the Major NSR SIP requirements. The Program lacks requirements necessary for enforcement of the applicable emissions limitations, including a permit application and issuance process. Overall, the Program fails to include sufficient legally enforceable safeguards to ensure that the NAAQS and control strategies are protected. Furthermore, the Program provides a *de minimis* exemption from the Texas Minor NSR SIP, and therefore, it is a SIP relaxation, which creates a risk of interference with NAAQS attainment, RFP, or any other requirement of the Act. EPA lacks sufficient information to determine that this SIP relaxation would not interfere with these requirements. 74 FR 48450, at 48463. Additionally, the legal test for whether a *de minimis* threshold can be approved is whether it is consistent with the need for a plan to include legally enforceable procedures to ensure

that the State will not permit a source that will violate the control strategy or interfere with NAAQS attainment, as required by 40 CFR 51.160(a)–(b). 74 FR 48450, at 48460. The State failed to demonstrate that this exemption will not permit changes that will violate the Texas control strategies or interfere with NAAQS attainment. Therefore, we are disapproving the submitted Qualified Facilities Program as a Minor NSR SIP revision because it does not meet sections 110(a)(2)(C) and 110(l) of the Act and 40 CFR 51.160.

The Qualified Facilities Program does not ensure protection of the NAAQS and prevent violations of any State control strategy. First, the Program fails to ensure that all participating Qualified Facilities must have obtained a Texas NSR SIP permit. Without the assurance that all Qualified Facilities have obtained a Texas NSR SIP permit, EPA cannot determine that all Qualified Facilities must have Federally enforceable emission limitations based on the chosen control technology, and that the Qualified Facility will not interfere with attainment and maintenance of the NAAQS or violate any control strategy. Therefore, EPA finds that the Qualified Facilities Program is inadequate to ensure that all Qualified Facilities have an appropriate allowable limit to prevent interference with attainment and maintenance of the NAAQS or violations of any State control strategy that is required by the Texas NSR SIP. See Section V.G.1 for further information. In addition, the Program does not require the owner or operator to maintain the information and analysis showing how it concluded that there will be no adverse impact on ambient air quality before undertaking the change. Therefore, EPA finds that the Qualified Facilities Program is inadequate to ensure that all changes under the Program that are exempted from permitting will not prevent interference with attainment and maintenance of the NAAQS or violations of any State control strategy that is required by the Texas NSR SIP. 74 FR 48450, at 48462; Section V.F.1.

Regarding the State's use of minor source netting in the Qualified Facilities Program, EPA makes the following findings:

The Qualified Facilities Program is inadequate because it fails to provide clear and enforceable requirements for a basic netting program. Therefore, this Program, as submitted, does not meet the fundamental requirements for an approvable Minor NSR netting program. To analyze the Program's Minor NSR netting for approvability, we used the fundamental principles of Major NSR

and NSR netting because these principles are designed to ensure that there is no interference with the NAAQS and control strategies.<sup>4</sup> The Major NSR netting program requires the following: (1) An identified contemporaneous period, (2) the reductions must be contemporaneous and creditable, (3) the reductions must be of the same pollutant as the change, (4) the reductions must be real, (5) the reductions must be permanent, and (6) the reductions must be quantifiable. See 40 CFR 51.165(a)(1)(vi) (the definition of "net emissions increase"); 40 CFR 51.166(b)(3). To be considered creditable, the reduction's old level of emissions must exceed the new level of emissions, the reduction must be enforceable as a practical matter at and after the time the actual change begins, and the reduction must have approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change. See 74 FR 48450, at 48461.

As discussed below, the Program's netting provisions do not meet all of the requirements; therefore, the Qualified Facilities netting is disapproved as a Minor NSR netting program.

- The Program fails to define a contemporaneous or other period for the netting and that the emission reductions must occur within that specified period. 74 FR 48450, at 48461; Section V.C.1 below.

- Emissions reductions under the Qualified Facilities program are not enforceable as a practical matter at and after the time of the actual change begins; and therefore, not sufficiently creditable. First, the Program fails to ensure a separate netting analysis is performed for each proposed change because the rules are not clear that reductions can only be relied upon once. Therefore, we find that the Program fails to prevent double counting; and consequently these types of reductions are not creditable. Second, the Program does not require that each Qualified Facility involved in the netting transaction must submit a permit application and obtain a permit revision reflecting all of the changes made to reduce emissions (relied upon in the netting analysis) as well as reflecting the change itself that increased emissions. As a result, emissions reductions are not enforceable; and therefore, not

<sup>4</sup> However, our analysis of the netting provisions in the Qualified Facilities Program under Minor NSR is not intended to create a binding Agency position on evaluating the approvability of Minor NSR netting.

sufficiently creditable. 74 FR 48450, at 48462; Section V.C.1.

- EPA proposed to find that the State's "interchange" methodology, submitted 30 TAC 116.116(e)(3), is consistent with the Federal requirement that reductions must be of the same pollutant as the change.<sup>5</sup> 74 FR 48450, at 48461. However, after evaluation of received comments, EPA finds that the term "sulfur compounds" in 30 TAC 116.116(e)(3)(F), is broad enough to include hydrogen sulfide. Hydrogen sulfide is a regulated NSR pollutant (*see* 40 CFR 52.21(b)(23)(i) and 52.21(i)(5)(i)) and, in certain instances, may require separate analysis from sulfur oxides in a netting analysis. Therefore, the interchange methodology may not ensure the health impacts of all sulfur compounds will be equal. The State failed to demonstrate that such use of hydrogen sulfide would protect the sulfur dioxides NAAQS. Additionally, this provision allows PM-2.5 to be interchanged with PM-10. However, because PM-10 and PM-2.5 are two separate pollutants and the State failed to demonstrate that such use of PM-10 would protect the PM-2.5 NAAQS, this interchange is inappropriate. Therefore, this provision is unapprovable for the sulfur dioxides and PM NAAQS. Section V.C.1 below.

- The Program also lacks any provisions that require the reductions to be permanent. Specifically, the submitted Program does not include provisions that either prohibit future increases at the Qualified Facility, or ensure that any future increase at a Qualified Facility at which a previous netting reduction occurred is analyzed in totality to assure that the NAAQS remains protected from the original increase. 74 FR 48450, at 48461; Section V.C.1 below.

Section 30 TAC 116.117(b) lacks any provisions that require a permit application to be submitted to TCEQ for a change under the Program. There are no provisions in 30 TAC 116.117(b) that clearly indicate that TCEQ must issue a revised permit for the changes made by all of the participating Qualified Facilities. Thus, EPA finds that the Program is not approvable because it lacks this requirement and therefore is not enforceable. *See* 74 FR 48450, at 48462, Section V.D.1 below.

The Qualified Facilities SIP submittal is a relaxation under CAA section 110(l) because it provides an exemption from NSR permitting not previously available

to facilities. As such, this revision creates a risk of interference with NAAQS attainment, RFP, or any other requirement of the Act. EPA lacks information sufficient to make a determination that the requested SIP revision relaxation does not interfere with any applicable requirements concerning attainment and RFP, or any other applicable requirement of the Act, as required by section 110(l). *See* 74 FR 48450, at 48463.

For the reasons discussed above in this section and as further discussed below in Section V (Response to Comments), EPA is disapproving the submitted Qualified Facilities Program as not meeting section 110(a)(2)(C) and 110(l) of that Act and 40 CFR 51.160. *See* 74 FR 48450, at 48462.

#### D. Definition of "Facility"

EPA proposed to make an administrative correction to the severable submittal for the SIP-approved definition of "facility" under 30 TAC 116.10(6). Consistent with our proposal, EPA is finalizing this administrative correction in today's action. Specifically, EPA corrects a typographical error at 72 FR 49198 to clarify that the definition of "facility," as codified at 30 TAC 116.10(6), was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. 74 FR 48450, at 48465.

However, EPA wishes to note that each part of the Texas NSR program depends greatly upon the definition of "facility" that is applicable to it and upon how that definition is used in context within each part of the program. There are instances where a specific part of the Texas NSR program does not meet the Act and EPA regulations due to the definition of "facility" that applies to that part of the program. For example Texas's PSD non-PAL rules explicitly limit the definition of "facility" to "emissions unit," but the NNSR non-PAL rules fail to include such a limitation. 74 FR 48450, at 48475; *compare* 30 TAC 116.10(6) to 30 TAC 116.160(c)(3). TCEQ did not provide information to demonstrate that the lack of this explicit limitation in the NNSR SIP non-PALs revision is at least as stringent as the revised Major NSR SIP requirements. 74 FR 48450, at 48455; Section V.M. below.

#### V. Response to Comments

In response to our September 23, 2009, proposal, we received comments from the following: Sierra Club—Houston Regional Group; Sierra Club Membership Services (including 2,062 individual comment letters); Harris County Public Health and

Environmental Services; Texas Commission on Environmental Quality; Members of the Texas House of Representatives; Office of the Mayor—City of Houston, Texas; University of Texas at Austin School of Law—Environmental Clinic; Baker Botts, L.L.P., on behalf of BCCA Appeal Group; Baker Botts, L.L.P., on behalf of Texas Industrial Project; Bracewell & Guiliani, L.L.P., on behalf of the Electric Reliability Coordinating Council; Gulf Coast Lignite Coalition; Texas Chemical Council.

#### A. General Comments

##### 1. Comments Generally Supporting Proposal

*Comment:* Harris County Public Health & Environmental Services (HCPHES) acknowledges that EPA takes issue with the TCEQ regulations because of the lack of specificity regarding definitions and general lack of checks and balances to ensure that Federal requirements are met during the State's permitting processes, and because they do not meet the Minor NSR SIP and Major NSR SIP, including the Major NSR Nonattainment SIP requirements. Those concerns, currently unaddressed by the TCEQ, have ultimately resulted in EPA's proposed disapproval of portions of the TCEQ's most recent SIP submittal. HCPHES views a TCEQ program that meets the Federal requirements as being critical to ensuring that air quality in the Houston Galveston Brazoria (HGB) area returns to levels compliant with the NAAQS. HCPHES is very concerned that the TCEQ programs fall short of Federal requirements and encourages EPA to aggressively pursue the timely correction of these deficiencies to ensure the health, safety, and well being of the citizens of Harris County. HCPHES supports EPA's conclusion to disapprove portions of the SIP as proposed until such time as TCEQ addresses all of the specifics noted in the **Federal Register**.

*Comment:* Several members of the Texas House of Representatives support EPA's proposed disapproval of the Qualified Facilities Program. While the Qualified Facilities Program was a legislative creation, these members of the Texas House recognize that the statutory language and associated regulations are inconsistent with current CAA requirements regarding modifications and public participation. Particular concerns are:

- *Inadequate TCEQ oversight.* The rules authorize many changes at facilities without any pre-approval by TCEQ or procedures for denial for

<sup>5</sup> *See* 40 CFR 51.165(a)(1)(vi)(A) and 51.166(b)(3)(i), which define net emissions increase "with respect to any regulated NSR pollutant." Emphasis added.

cause. These off-permit changes are difficult to track and enforce and may threaten ambient air quality.

- *The lack of understandable and traceable permits.* Texas industry, regulators, and the public should be able to obtain a permit, read it, and know what quantity of what pollutants the facility is authorized to emit. The off-permit changes authorized through the Qualified Facilities rules prevent such transparency.

*Comment:* Houston Regional Group of the Sierra Club (Sierra Club) supports EPA's analysis and agrees that all of the September 23, 2009, proposals (including the Qualified Facilities Program) should be disapproved. The commenter generally supported EPA's proposed disapproval of the Qualified Facilities Program; Flexible Permits Program; and Texas Major and Minor NSR SIP for 1997 8-hour and 1-hour ozone NAAQS, Prevention of Significant Deterioration (PSD) SIP, and Standard Permit for Pollution Control Projects. The commenter provided additional comments on our proposed disapproval of the Flexible Permits Program, which EPA will address in its separate action on the Flexible Permits Program.

*Response:* Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as discussed in detail at 74 FR 48450, at 48455–48463, and further support EPA's action to disapprove the Qualified Facilities submission.

*Comment:* The Sierra Club Membership Services (SCMS) sent numerous similar letters via e-mail that relate to this action. These comments include 1,789 identical letters (sent via e-mail), which included the following comments:

- The TCEQ is broken and the commenters applaud EPA's proposed ruling that major portions of the TCEQ air permitting program does not adhere to the CAA and should be thrown out;
- While agreeing that the proposed disapprovals are a good first step, the commenters state that EPA should take bold actions as follows:
  - Halting any new air pollution permits being issued by TCEQ utilizing TCEQ's current illegal policy;
  - Creating a moratorium on the operations of any new coal fired power plants in Texas until TCEQ cleans up its act by operating under the Federal CAA;
  - Requiring coal companies clean up their old, dirty plants—no exceptions, no bailouts, and no special treatment—by reviewing all permits issued since TCEQ adopted its illegal

policies and requiring that these entities resubmit their applications in accordance with the Federal CAA; and

- Put stronger rules in place in order to reduce global-warming emissions and to make sure new laws and rules do not allow existing coal plants to continue polluting with global warming emissions.

- The commenters further state that Texas: (1) Has more proposed coal and pet coke fired power plants than any other state in the nation; (2) Is number 1 in carbon emissions; and (3) Is on the list for the largest increase in emissions over the past five years.

- The commenters do not want coal to stand in the way of a clean energy future in Texas. Strong rules are needed to make sure the coal industry is held responsible for their mess and that no permits are issued under TCEQ's illegal permitting process. Strong regulations are vital to cleaning up the energy industry and putting Texas on a path to clean energy technology that boosts economic growth, creates jobs in Texas, and protects the air quality, health, and communities.

In addition, SCMS sent 273 similar letters (sent via e-mail) that contained additional comments. These additional comments include the following:

- Commenters suggest that Texas rely on wind power, solar energy, and natural gas as clean alternatives to coal.
- Other comments expressed general concerns related to: Impacts on global warming, lack of commitment by TCEQ to protect air quality, the need for clean energy efficient growth, impacts of upon human health, endangerment of wildlife, impacts on creation of future jobs in Texas, plus numerous other similar concerns.

*Response:* To the extent the SCMS letters comment on the proposed disapproval of the Qualified Facility program, they support EPA's action to disapprove the Qualified Facilities submission. The remaining comments are outside the scope of our proposed action relating to the Qualified Facilities Program.

*Comment:* The Environmental Clinic, the University of Texas at Austin School of Law (UT Environmental Clinic) commented that EPA should disapprove several other sections of 30 TAC Chapter 116.

*Response:* This final rulemaking only addresses the Qualified Facilities Program. Therefore, issues related to other portions of Texas's regulations are outside the scope of this rulemaking.

## 2. Comments Generally Opposing Proposal

*Comment:* TCEQ provided several general comments on the proposal. The TCEQ commented that the Qualified Facilities Program was developed by the 74th Texas Legislature through Senate Bill (SB) 1126, which became effective May 19, 1995. SB 1126 amended the Texas Clean Air Act by revising the definition of "modification of existing facility," which changed the factors used to determine whether a modification for State permitting (*i.e.* Minor NSR) has occurred. In 1996, 30 TAC Chapter 116 was revised to incorporate this legislative directive. These changes provide that modifications may be made to existing facilities without triggering the State's Minor NSR requirements whenever: (1) The facility to be modified has received a permit, permit amendment, or has been exempted from permitting requirements no earlier than 120 months from when the change will occur; or (2) uses air pollution control methods that are at least as effective as the Minor NSR SIP best available control technology (BACT) that the Commission required 120 months before the change will occur. Such facilities are designated as "qualified facilities."

TCEQ has always considered the Qualified Facilities Program to be applicable only to Minor NSR and not applicable to Major NSR, although this is not specifically stated in the rule. In summary, under the Qualified Facilities Program, TCEQ: (1) Determines Federal applicability as a first step in processing a Qualified Facilities request; and uses actual emissions, not allowable emission rates; (2) applies Federal NSR requirements when triggered; (3) does not circumvent Federal requirements applicable to major stationary sources or major modifications; (4) considers the use of "modification" to be separate and severable from the Federal definition of "modification" as reflected in the SIP-approved Major NSR Program; and (5) does not violate the approved SIP with regard to Major NSR or Minor NSR Program requirements.

*Comment:* The Texas Chemical Council (TCC) comments that it would be short-cited to analyze the three programs (Qualified Facilities, Flexible Permits, and NSR Reform) apart from the dramatic improvements in the air quality in Texas in the past 15 years. TCC goes on to describe these improvements. TCC supports full approval of Qualified Facilities. The Qualified Facilities Program is not intended to shield a source from major NSR. The Program is a robust, Federally enforceable program. The Qualified

Facilities Program is authorized by the TCAA, promotes flexibility, and allows sources to make certain changes without triggering NSR. If Major NSR is triggered, a facility cannot be a Qualified Facility. The definition of a Qualified Facility makes it clear that a Qualified Facility is an existing facility. A Qualified Facility may make a physical change in or change the operation of that facility as long as the change does not result in a net increase in allowable emissions of any air contaminant and does not result in the emission of any air contaminant not previously emitted. Additionally, the facility must be using equipment at least as effective as the BACT required by TCEQ. TCC supports full approval of the three Texas air permitting program submittals. The SIP revisions submitted to EPA by TCEQ over the last 15 years are critical components to Texas air permitting program. Texas should not be punished for EPA's failure to act within the statutory timeframe in the CAA. EPA offers little or no legal justification for proposing disapproval of these programs. EPA's proposed action will have an enormous impact on the country's largest industrial state. The SIP revision submittals for these programs are at least as stringent as the applicable Federal requirements and should be fully approved.

*Comment:* Bracewell & Giuliani LLP, counsel to the Electric Reliability Coordinating Council (ERCC), commented that Qualified Facilities provides incentives to implement pollution reduction measures at existing facilities. EPA's proposed disapproval does not provide any evidence that this authorization is actually used for major modifications or in fact interferes with air quality improvements. Discontinuance of this program could deter or delay many pollution reduction measures because the cost and resources associated with a full notice and comment case-by-case permit would outweigh the economic benefits of the additional controls. EPA should determine that the Qualified Facilities Program satisfies the CAA requirements for a state minor source program and retract the SIP disapproval and approve this SIP revision. EPA should recognize the validity of permits issued under the Texas permitting program and refrain from taking enforcement actions to address EPA concerns.

*Comment:* Jackson Walker, LLP, counsel to Gulf Coast Lignite Coalition GCLC, provided the following general comments on all three proposed disapprovals (Qualified Facilities, Flexible Permits, and NSR Reform): (1) Commenters disagree with all the

proposed disapprovals because the SIP as implemented by TCEQ meets or exceeds CAA requirements and has met the goals of the CAA; (2) EPA has a history of focusing on results; so, EPA should look beyond immaterial differences in the rule provisions and focus on the positive results that Texas has achieved under the TCAA and the State's submittals; (3) Texas sources have relied on the submitted rules for as long as 15 years in some cases. To disapprove the submittals after so long puts too much burden on the regulated community, creates regulatory uncertainty, hurts the vulnerable economy by potentially increasing compliance costs, and may discourage future business expansion; and (4) GCLC requests that EPA work collaboratively, not combatively, with TCEQ to resolve any issues under the CAA.

*Comment:* Baker Botts, LLP, counsel for Texas Industry Project (TIP) and Business Coalition for Clean Air (BCCA) provided the following comments. TIP and BCCA support full approval of Qualified Facilities because the submittal will strengthen Texas's permitting program. EPA should work expeditiously with TCEQ to approve the Qualified Facilities Program. Further, under Texas's integrated air permitting regime, air quality in the state is demonstrating strong, sustained improvement. Commenters describe the air quality improvements in Texas in the recent past. Finally, commenters describe their understanding of how the Qualified Facilities Program operates. Qualified Facilities is a Minor NSR applicability trigger that allows existing emissions facilities that employ BACT to make changes without Minor NSR review as long as the changes do not result in net emissions increases. The Qualified Facilities Program is authorized by the TCAA and applies only to existing facilities. The term "facility" is analogous to the Federal definition of "emissions unit," under Texas's Title V program. See 30 TAC 122.10(8). The Texas Legislature created the Qualified Facilities Program as an incentive for sites to implement BACT. To be "qualified," the source must (1) have a permit or permit amendment or exempt from pre-construction permit requirements no earlier than 120 months before the change will occur, or (2) use air pollution control methods that are at least as effective as the BACT that was required or would have been required for the same class or type of facility by a permit issued 120 months before the change will occur. See 30 TAC 116.116(e). A qualified facility may

lose its status as "qualified" if its permit, exemption, or control method falls outside the 10-year window. See Texas Nat'l Res. Conservation Comm'n, *Modification of Existing Facilities under Senate Bill 1126: Guidance for Air Quality*, (April 1996), 5 [hereinafter *Modification of Existing Facilities Guidance*].

*Comment:* Texas Oil & Gas Association (TxOGA) is encouraged that EPA is taking action to provide certainty in the regulatory process for businesses. TxOGA supports the ongoing goal of improved air quality; however, commenters do not believe that the proposed disapproval does anything to improve air quality in Texas. Further, the proposal may discourage future business expansion in Texas.

*Response:* EPA understands TCEQ's explanation of the origination of the Program in SB 1126. Nonetheless, the Qualified Facilities Program must meet all Federal requirements under the CAA in order to be approvable. The fact that EPA failed to act on the Qualified Facilities Program SIP revision within the statutory timeframe does not dictate the action EPA must take on the Program at this time. We cannot approve a program that fails to meet the requirements of the CAA. As discussed throughout our proposal and this final notice, the current Qualified Facilities Program fails to meet all requirements. We disagree with commenters that the Qualified Facilities Program is exclusively a Minor NSR program, based upon the ambiguities in the Program's rules. Furthermore, EPA need not prove that the Program is actually used for major modifications. EPA is required to review a SIP revision submission for its compliance with the Act and EPA regulations. CAA 110(k)(3); *Natural Resources Defense Council, Inc. v. Browner*, 57 F.3d 1122, 1123 (DC Cir. 1995); *American Cyanamid v. EPA*, 810 F.2d 493, 495 (5th Cir. 1987). This includes an analysis of the submitted regulations for their legal interpretation. The Program's rules are ambiguous and therefore do not adequately prohibit use under Major NSR. We recognize that TCEQ considers the Program to be a Minor NSR Program; however, the State admits that its rules are insufficient to limit the Program to Minor NSR. See 74 FR 48450, at 48456–48457; Section V.F. below for further information.

EPA enforcement of Federal requirements in Texas is outside the scope of this rulemaking. Additionally, comments on the Flexible Permits Program and the NSR Reform submittal are outside the scope of this notice. EPA will address the comments on its



proposed disapprovals of Flexible Permits and NSR Reform in separate actions on these programs.

*B. Comments That This Action Is Inconsistent With the CAA*

*Comment:* ERCC commented that EPA's proposed disapprovals are not rationally supported by case law and are inconsistent with the CAA. Congress placed primary responsibility for developing SIPs on the states, so permitting programs among states can vary greatly. EPA determines whether the state SIP satisfies the minimum requirements of the CAA. *Union Electric Co. v. EPA*, 427 U.S. 246 (1976), *rehearing denied* 429 U.S. 873 (1976); *Train v. NRDC*, 421 U.S. 60 (1975); *Florida Power and Light Co. v. Costle*, 650 F.2d 586 (5th Cir. 1979); 71 FR 48696, 486700 (August 21, 2006) (Proposed rule to promulgate a FIP under the CAA for tribes in Indian country). The Fifth Circuit Court of Appeals recently stated that "EPA has no authority to question the wisdom of a State's choice of emission limitations if they are part of a SIP that otherwise satisfies the standards set for in 42 U.S.C. 7410(a)(2)." *Clean Coalition v. TXU Power*, 536 F.3d 469 Fn.3 (5th Cir. Tex. 2008). Texas's permitting programs are based on the recognized Minor NSR flexibility and consistent with prior EPA approvals of other state SIPs. EPA must review other approved state programs to ensure that Texas's sources are not put at a competitive disadvantage. See Memorandum from John Seitz, Director, OAQPS, *SIP Consistency Process* (April 4, 10, 1996). EPA's proposed disapprovals could have dramatic impact on industries in Texas. EPA should solicit comments from all EPA regions on whether the proposed actions are inconsistent with other state SIPs and compare the stringency of the Texas programs to those of other states. ERCC is confident that EPA will realize that the Texas programs are consistent and possibly more stringent than other permitting programs throughout the country.

*Response:* EPA continues to recognize that permitting programs among states can vary greatly and provide some flexibility for Minor NSR SIP programs. However, in order to be approved as part of the SIP, the Qualified Facilities Program must meet all applicable Federal requirements. Here, the commenter's reliance on the Fifth Circuit's dicta in *Clean Coalition* is misplaced because the Qualified Facilities Program does not meet the standard set in 42 U.S.C. 7410(a)(2)(C). Section 42 U.S.C. 7410(a)(2)(C) requires the State to have a permitting program

that complies with PSD and Nonattainment New Source Review (NNSR) permit requirements (at 42 U.S.C. 7475 and 7503, respectively), as well as Minor NSR permit requirements. As part of the State's permitting program, the Qualified Facilities Program fails to meet these requirements of the Act. As discussed throughout our proposal and this final action, the submitted Program fails to meet all requirements for an approvable permitting program, including submitting information sufficient to demonstrate that the Program is restricted only to Minor NSR. Commenters argue that the Qualified Facilities Program is consistent with other SIP approved programs; however, they fail to cite any specific examples.

*C. Comments Addressing Whether the Qualified Facilities Rules Allow Sources to "Net Out" of Major and Minor NSR Through Rules That Are Not Adequate To Protect the NAAQS and State Control Strategies*

1. Comments Generally Supporting Proposal

*Comment:* UT Environmental Clinic commented that the Qualified Facilities Program fails to meet the netting requirements for several reasons. The commenter notes that the Qualified Facilities Program netting calculations can be based on allowable emissions. Allowables netting violates Major NSR because it is inconsistent with *State of New York v. EPA*, 413 F.3d 3, 40 (DC Cir. 2005) and violates the CAA; it violates Minor NSR because it fails to require an evaluation of the actual emissions impacts on maintenance of the NAAQS.

*Response:* Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as a substitute for a Major NSR SIP program as discussed in detail at 74 FR 48450, at 48459, and further support EPA's action to disapprove the Qualified Facilities submission.

We find that the Program authorizes existing allowable, rather than actual emissions, to be used as a baseline to determine applicability. This use of allowables violates the Act for Major NSR SIP requirements and is contrary to *New York v. EPA*, 413 F.3d 3, 38–40 (DC Cir. 2005) ("New York I"). 74 FR 48450, at 48459. Under the submitted Program, the project's increases in emissions are calculated based upon its projected allowable emissions. The baseline uses the permitted allowable emission rate (lowered by any applicable state or Federal requirement) if the facility "qualified" under 30 TAC

116.10(11)(E)(i). If the facility "qualified" under 30 TAC 116.10(11)(E)(ii), the baseline uses the actual emission rate (minus any applicable state or Federal requirement). In the applicability netting analysis, the baseline for all the other participating minor and major existing Qualified Facilities is calculated in the same way. The emission reductions are calculated similarly, *i.e.*, reductions beyond the permitted allowable or actual emission rates (minus the applicable state and Federal requirements). Thus, this submitted Program allows an evaluation using allowable, not actual emissions, as the baseline to calculate the project's proposed emission increase and for many of the netting emission reductions, thereby in many cases possibly circumventing the major modification applicability requirements under the Major NSR rules. Therefore, the Program fails to meet the CAA and Major NSR requirements to use baseline actual emissions for major source netting as the starting point from which the amount of creditable emission increases or decreases is determined. 74 FR 48450, at 48459.

EPA agrees that the reductions in the Program's netting are not based on actual emissions. Such netting may be permissible for a Minor NSR Program; *provided* that the netting provisions assure protection of the NAAQS and the SIP control strategies as required by section 110(a)(2)(C) of the CAA. Allowables netting is acceptable because CAA section 110(a)(2)(c) does not explicitly prohibit the use of allowables netting for Minor NSR programs. However, Texas failed to submit sufficient information to demonstrate that the use of allowable emissions in a Minor NSR netting program continues to protect the NAAQS and control strategies; therefore, EPA cannot determine if this requirement is met. Today's rulemaking disapproves netting under the Qualified Facilities Program as a Minor NSR program, in part because the Program fails to ensure that ambient air is protected in consideration of all changes in the netting.

*Comment:* UT Environmental Clinic commented that the definitions in section 116.10 do not adequately specify how to calculate emissions reductions for purposes of the netting analysis. For example, the Texas definition of actual emissions is the "highest rate" actually achieved within the past 10 years. It is unclear whether this is the highest emission rate achieved at a single point in time or averaged over some period.

*Response:* We disagree that the reductions are not quantifiable. The



netting is based on the most stringent of the permitted emissions rate (which includes the highest achievable actual emission rate) or any applicable state or Federal rule. Nothing in the State's definition of "actual emissions" implies at all that there is any averaging involved in the calculations. The reduction is based upon the highest rate the facility achieved at a single point in time, looking back the past 10 years.

While we proposed to find that the reductions were quantifiable, we requested comments on two aspects of the Program as it relates to this principle. 74 FR 48450, at 48461–48462. First, we requested comment on whether the regulatory provisions at 30 TAC 116.10(1) and (2) provide clear direction on the appropriate calculation procedures sufficient to ensure the reductions are quantifiable. As stated above, we disagree with the commenter's argument that the definitions in section 116.10 do not adequately specify how to calculate emissions reductions for purposes of the netting analysis.

Second, the submitted rules provide that a Qualified Facility nets its emissions increase on the same basis as its allowable emissions limitation. 30 TAC 116.116(e)(3)(A). We requested comment on whether netting on such a basis is sufficiently quantifiable, and whether any additional provisions are necessary to ensure that the entire emissions increase is properly netted against reductions from the other Qualified Facility. We did not receive any comments on this second aspect of quantifiability under the Program. Because no comments were submitted showing the basis was not sufficiently quantifiable, we continue to believe that netting for a Minor NSR SIP program on the adequacy of the Program's netting of emissions increases on the same basis as its allowable emissions limitation, is sufficiently quantifiable.

*Comment:* UT Environmental Clinic commented that the Qualified Facilities rules allow all emission reductions at the same account number to be considered in the net emission calculation. In fact, the rules could be read to allow the "offsetting" of emissions above allowables by decreases in emissions at any "different facility." 30 TAC 116.110(3). Because an account number can include multiple sources, the Texas rules allow consideration of emission decreases from outside the major stationary source in violation of 42 U.S.C. 7411(a).

*Response:* Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as a substitute for a Major NSR SIP program

as discussed in detail at 74 FR 48450, at 48458–48459, and further support EPA's action to disapprove the Qualified Facilities submission.

We find the Program is deficient for Major NSR netting because it may allow an emission increase to net out by taking into account emission decreases outside of the major stationary source<sup>6</sup> and, in other circumstances, allow an evaluation of emissions of a subset of units at a major stationary source.<sup>7</sup> The State failed to submit information sufficient to demonstrate that the Program includes the necessary replicability and accountability to prevent such circumvention. Therefore, the Program does not meet the CAA's definition of "modification" and the Major NSR SIP requirements and is inconsistent with *Alabama Power v. Costle*, 636 F.2d 323, 401–403 (DC Cir. 1980) and *Asarco v. EPA*, 578 F.2d 320 (DC Cir. 1978). 74 FR 48450, at 48458–48459.

*Comment:* UT Environmental Clinic commented that the Qualified Facilities netting rules only allow consideration of the increase in allowable emissions from the Qualified Facility undergoing a change, but consider the decreases from any other Qualified Facilities at the same account number. There is no consideration of all the emission increases so there is no adequate impacts analysis from the source.

*Response:* Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as a substitute for a Major NSR SIP program as discussed in detail at 74 FR 48450, at 48458–48459, and further support EPA's action to disapprove the Qualified Facilities submission.

Major NSR netting is based upon all contemporaneous increases and decreases at the same major stationary source that occur within a reasonable period that the states must define in their approved SIPs. The submitted Program's netting is not based upon all contemporaneous increases at the same major stationary source and not all decreases at the same major stationary source. However, the State contends that the Program is not intended to

<sup>6</sup> The Texas SIP defines an "account" to include an entire company site, which could include more than one plant and certainly more than one major stationary source. SIP rule 30 TAC 101.1(1), second sentence.

<sup>7</sup> Under the submitted Program, not all emission points, units, facilities, major stationary sources, or minor modifications at the site or their increases in emissions are required to be evaluated in the applicability netting analysis. So the Program fails to require the evaluation of emissions changes at the entire major stationary source correctly as required by the Major NSR SIP regulations. 74 FR 48459.

apply for Major NSR netting but only for Minor NSR netting. Moreover, the Program is not intended to allow contemporaneous netting. Instead, one looks to the increases from the proposed change and to decreases made at the same time as the proposed change. Such an approach, if fully delineated in the State's Program rules, would satisfy the minimum requirements for an approvable Minor NSR netting program *provided* that the ambient air is protected in consideration of all changes in the netting. Today's rulemaking disapproves netting under the Qualified Facilities Program as a Minor NSR program, in part because the Program fails to ensure that ambient air is protected.

*Comment:* UT Environmental Clinic commented that the Qualified Facilities rules do not define a contemporaneous period nor require that emission reductions occur within a specified period. EPA notes in the **Federal Register** that Texas intended that any relied-upon reductions occur simultaneously with the increase. However, the commenter argues that nothing in the rule requires this.

*Response:* We agree with the comment insofar as it asserts that the Program fails to define a contemporaneous period or require that emission reductions occur within a specified period. EPA finds that, while Texas intended that any relied-upon reductions occur simultaneously at the time of the increase,<sup>8</sup> the Program is deficient because it does not expressly define the applicable period in which the reductions must occur. See our response to the previous comment. 74 FR 48450, at 48461.

*Comment:* UT Environmental Clinic commented that because the Qualified Facilities rules allow reductions to be based upon allowable emissions, they do not ensure that reductions are real.

*Response:* We disagree that just because the reductions are based upon allowable emissions, these reductions are not real. For example, reviewing authority may presume that source-specific allowable emissions may be equivalent to the actual emissions. See 40 CFR 51.165(a)(1)(xii)(C) and 51.166(b)(21)(iii). The commenter fails to discuss why the use of allowable emissions makes the reductions not real.

*Comment:* The UT Environmental Clinic commented that the rules fail to ensure that netted reductions are permanent.

*Response:* We agree with the commenter that the Program lacks any provisions that require that the

<sup>8</sup> See 21 Tex. Reg. 1573 (February 27, 1996).

reductions are permanent. For reductions to meet the netting requirement to be permanent, the rules must include a prohibition against future increases at the Qualified Facility, or include regulatory language that assures that any future increase at a Qualified Facility at which a previous netting reduction occurred is analyzed in totality to assure that the NAAQS remains protected from the original increase. However, the submitted Program does not include such provisions. Consequently, the Qualified Facilities rules are inadequate because they fail to ensure that the reductions are permanent.

*Comment:* UT Environmental Clinic commented that the rules do not prevent double counting of emission reductions.

*Response:* For an additional *separate* project, it appears that the state intended that the reductions must occur at the time of that *additional* project that will need to obtain additional reductions to net out. If the regulatory text was consistent with this approach, this limitation would prevent double counting of the netting reductions. The State's intent is that the holder of the permit is required to perform a new, separate netting analysis and rely upon reductions not relied upon in the first netting analysis. See 74 FR 48450, at 48461 (*citing* 21 Tex. Reg. 1573 (February 27, 1996); page 154 of the 1996 SIP revision submittal). We agree that the rules are not clear that a subsequent change at a Qualified Facility that previously relied upon netting must conduct a separate netting analysis that relies upon reductions that were not relied upon in the first netting analysis. EPA cannot find any provisions in the Program to ensure a separate netting analysis performed for each proposed change. Therefore, the Program fails to prevent double counting; and consequently these types of netting reductions are not enforceable as a practical matter at and after the time of the actual change begins; and therefore, not sufficiently creditable. 74 FR 48450, at 48461.

*Comment:* UT Environmental Clinic commented that the Qualified Facilities rules fail to ensure that the emission reductions are enforceable. Facilities provide notice of changes to Qualified Facilities on Form PI-E, which is not enforceable, and Qualified Facility changes that affect permitted facilities are not required to be incorporated into a permit until renewal or amendment. TCEQ noted in its Qualified Facility guidance that the form is not Federally enforceable "but is simply a form to provide information to demonstrate that

the change meets qualified facility flexibility." Consequently, Qualified Facility reductions are allowed to remain unenforceable for years. Further, Texas rules make it unclear whether emission reductions are ever made enforceable because a portion of the definition of "allowable emissions" states that "[t]he allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls." 30 TAC 116.10(2)(F). This portion of the definition of "allowable emissions" states that "[t]he allowable emissions for a qualified facility shall not be adjusted by the voluntary installation of controls." Additionally, there are no monitoring requirements in the Qualified Facilities rules to track compliance with commitments to reduce emissions of limitations on emissions increases.

*Response:* We agree that the Qualified Facilities rules fail to ensure that the emission reductions relied upon in a netting analysis are enforceable. We noted at 74 FR 48450, at 48462 that the rules do not require permits for these relied-upon reductions. We also agree that the Program does not require monitoring because no permit is required for each change. See Section V.D.1 below.

We disagree that 30 TAC 116.10(2)(F) makes the rules vague as to enforceability. This provision of the rule is defining how to calculate the baseline from which reductions occur. When calculating the allowable emissions for a Qualified Facility participating in the Program, one cannot count any reductions occurring as a result of the voluntary installation of controls. However, a facility can become "qualified" to use the Program by voluntarily installing controls. The reductions achieved by this voluntary installation of controls are not counted in the Qualified Facility's allowable emissions.

*Comment:* UT Environmental Clinic states that the Qualified Facilities rules do not ensure that emission reductions have the same health and welfare effects as the emission increase. Because the program allows the emission increase to be offset inside and outside the facility, it allows for emission increases close to the fence line, potentially affecting health and welfare of the surrounding community.

Moreover, the Qualified Facilities Program allows Qualified Facilities to offset emissions increases of one pollutant with emission decreases of another pollutant, as long as the pollutants are in the same "air contaminant category." The interchange

methodology established by TCEQ<sup>9</sup> to ensure that compounds within the VOCs air contaminant category, as interchanged, will have an equivalent impact on air quality, is not included in the Texas rules or statute. The rule merely defines an "air contaminant category" as a group of related compounds, such as volatile organic compounds, particulate matter, nitrogen oxides, and sulfur compounds. 30 TAC 116.116(e)(3)(F). Clearly emissions of all sulfur compounds, say sulfur dioxide and hydrogen sulfide, are not equal in terms of health impacts. Likewise, the health impacts of fine PM emissions are of significantly greater concern than the impacts of larger particles.

*Response:* With regard to VOCs and nitrogen oxides, EPA disagrees with the comment above that the Program is deficient because the State's rules allow an offset of an emission increase pollutant with emission decrease of another pollutant, as long as the pollutants are in the same "air contaminant category." The State's interchange methodology goes beyond the fundamental principle to determine whether the interchange of different compounds within the same air contaminant category will result in an equivalent decrease in emissions; e.g., one VOC for another VOC; for VOCs and nitrogen oxides. See 74 FR 48450, at 48461.

On the other hand, the term "sulfur compounds" in 30 TAC 116.116(e)(3)(F), is broad enough to include hydrogen sulfide. The State failed to demonstrate that use of hydrogen sulfide would protect the sulfur dioxides NAAQS. Therefore, we agree with the commenter that the interchange methodology does not ensure the health impacts of all sulfur compounds will be equal. With regard to the comment concerning particulate matter, the definition of "air contaminant category" allows PM-2.5 to be interchanged with PM-10. However, because PM-10 and PM-2.5 are two separate pollutants and the State failed to demonstrate that such use of PM-10 would protect the PM-2.5 NAAQS, this interchange is inappropriate. Therefore, we agree that the interchange methodology does not ensure the health impacts of all particulate matter will be equal.

We, however, disagree with the comment above that the Program fails to ensure that emission reductions have the same health and welfare effects as the emission increases. The State has established a methodology to use whenever there is a different location of emissions because of the intraplant

<sup>9</sup> See 74 FR 48455, n.3.

trading. For example, where the netting has the effect of moving emissions closer to the plant property line than the Qualified Facility to be changed, the State uses this methodology to analyze whether there could be an increase in off-site impacts. See 30 TAC

116.117(b)(5). We continue to believe that this will ensure the reductions have approximately the same qualitative significance for public health and welfare, which is required to ensure the reductions are creditable. Nevertheless, as stated above, we are disapproving the Qualified Facilities netting program as a substitute for a Major NSR SIP program and as a Minor NSR SIP program because the Program is inadequate to protect ambient air quality.

*Comment:* The UT Environmental Clinic commented that the Qualified Facilities netting Program does not adequately protect air quality under Minor NSR. Specifically, the Qualified Facilities netting provisions do not meet Federal netting standards, which are in place precisely to ensure that air quality is protected. The Program's failure to meet almost all of those basic netting requirements renders the rules inadequate.

*Response:* Generally, these comments support EPA's analysis of Texas's Qualified Facilities Program as a Minor NSR SIP program as discussed in detail at 74 FR 48450, at 48460–48462, and further support EPA's action to disapprove the Qualified Facilities submission.

*Comment:* The UT Environmental Clinic commented that the Program is clearly inadequate to ensure protection of the NAAQS and to prevent violations of control strategies. The rules cannot be approved as an exemption from Minor NSR permitting because they in no way ensure that the emission increases authorized pursuant to the rules will have a *de minimis* impact on air quality.

*Response:* We agree with the commenter that the Program is inadequate to ensure protection of the NAAQS for several reasons. As discussed below in Section V.G.1, we find that the Qualified Facilities rules are not clear that all Qualified Facilities must have obtained a Texas NSR SIP permit. Without the assurance that all Qualified Facilities have obtained a Texas NSR SIP permit, EPA cannot make the finding that each permit for a Qualified Facility includes an emission limitation based on the chosen control technology, with a determination that the Qualified Facility will not interfere with attainment and maintenance of the NAAQS or violate any control strategy. Therefore, the Program fails to ensure that all Qualified Facilities can operate

up to a permitted allowable limit such that they do not interfere with attainment and maintenance of the NAAQS and do not violate any State control strategy, as required by the Texas NSR SIP.

Additionally, the Program fails to ensure that the NAAQS are protected because 30 TAC 116.117 lacks language requiring the owner or operator to maintain the information and analysis showing how it concluded that there will be no adverse impact on ambient air quality before undertaking the change.

We agree with the commenter that the Program does not qualify as a *de minimis* exemption from Minor NSR. The State has not provided sufficient information to demonstrate that the exempted changes from the Minor NSR requirements will have only a *de minimis* effect. See Section V.D.1 below for more information.

## 2. Comments Generally Opposing Proposal

*Comment:* TCEQ commented that the Qualified Facilities Program can only be used if a physical or operational change complies with Federal NSR requirements. In order to make a physical or operational change to a Qualified Facility, an owner or operator must demonstrate that the change does not result in a net increase in allowable emissions of any air contaminant previously authorized under state minor source review. 30 TAC 116.116(e)(1). Keeping in mind the State definition of "facility," 30 TAC 116.116(e)(2) and (3) allow a Qualified Facility to demonstrate that a state modification has not occurred by comparing allowable emissions to allowable emissions before and after a proposed change. Allowable emissions (both hourly and annual rates) are one of the criteria to provide "state qualified" flexibility because the facilities must exist and be authorized, and thereby have undergone appropriate permit review. In addition, no existing level of control can be reduced. 30 TAC 116.116(e)(8). The commenter states that for *major sources*, in addition to State requirements, the evaluation of emissions related to physical and/or operational changes is conducted on a baseline actual to either a projected actual or potential to emit base if applicable. 30 TAC 116.116(e)(4). This comparison is used to determine if an emission increase above the appropriate significance threshold for a particular Federal permitting program has occurred. From the Federal NSR standpoint, if a proposed physical or operational change would result in an

emissions increase that exceeds a significance threshold, the appropriate analysis (netting) is triggered. If the results of the netting analysis indicate that a major modification has occurred, the appropriate Federal program(s) is triggered and Federal authorization must be obtained. In such a case, the Qualified Facilities Program would not be an applicable authorization pathway, and a State Minor NSR amendment must be obtained, along with the appropriate Federal NSR authorization. The exemption from the definition of "modification of an existing facility" under the Qualified Facilities Program does not relieve an owner or operator from conducting an evaluation to determine if a Federal major modification has occurred. TCEQ states that from the Federal standpoint, only the project's emission increases are evaluated (without consideration of emission decreases) to determine if a Federal applicability analysis (netting) has been triggered. If the project increases equal or exceed the netting threshold for the pollutant and this program, then a full contemporaneous netting exercise is conducted in an effort to determine if the modification is a major modification. If the project is a major modification, then the appropriate Federal NSR program, either PSD or nonattainment review, is triggered. A permit holder cannot use the "no net emissions increase" concept that is described in the Qualified Facilities Program rules as a mechanism to avoid a Federal NSR applicability analysis (netting).

*Comment:* TxOGA commented that the Qualified Facilities Program establishes an allowables-based trigger and has no effect on a permit holder's compliance obligations under Federal requirements. Texas rules clearly require compliance with Federal requirements. 30 TAC 116.117(a)(4) and (d). This interpretation is also supported by TCEQ guidance.

*Comment:* The TCC commented in response to EPA's assertion that a Major NSR applicability determination must be based on actual emissions, not allowables. TCC argues that the Qualified Facilities rules do not circumvent any Federal requirements for major stationary sources. TCC reiterates that a qualified facility must demonstrate that the change does not result in a net increase in allowables, the source must follow notification requirements, and the source cannot relax controls at the qualified facility.

*Response:* We acknowledge TCEQ's description of how the State intends to implement the Qualified Facilities Program; however, we have determined

that TCEQ's current rules are insufficient to prevent circumvention of Major NSR. EPA disagrees with the comments from TxOGA and TCC. The submitted Program lacks specific requirements that would require an owner or operator who proposes a change under the Qualified Facilities program to first conduct a Major NSR applicability analysis (netting) prior to receiving (or asserting) authorization under the Qualified Facilities Program.

*Comment:* TCEQ commented that for facilities undergoing an intraplant trade, where the allowable emissions at one facility are increased while allowable emissions at another facility are reduced an allowable-to-allowable comparison is used only to determine if a new emissions increase has occurred for State purposes. The emissions are reviewed simultaneously, which is more stringent than the Federal requirement that only requires contemporaneous emissions. If a net emissions increase has occurred, an owner or operator cannot use the Qualified Facilities Program to authorize the proposed project, and must find another State mechanism to obtain proper authorization. In addition, the commenter states that the owner or operator must submit pre-change notification if the intraplant trade moves emissions from the interior of a plant site closer to a property line. This gives TCEQ staff the ability to evaluate public protectiveness and evaluate any potential changes in off property impacts as they relate to all contaminants and pollutants with national standards, *i.e.* the NAAQS. This intraplant trade capability only exists to the extent that the project is a Minor NSR action, and does not apply if a major modification has been triggered under Federal NSR requirements.

*Response:* EPA disagrees with the commenter that under the Texas rules the Program's intraplant trading does not apply if a major modification has been triggered. As stated above, the program fails to require a Major NSR applicability analysis and is insufficient to prevent circumvention of Major NSR. Intraplant trading based on allowables to allowables netting is prohibited under Major NSR. *See State of New York et al., v. EPA*, 413 F.3d 3, 40 (DC Cir. 2005). However, such netting may be permissible for a Minor NSR program, provided that the netting provisions assure protection of the NAAQS. *See* 74 FR 48450, at 48462. As discussed above, Texas's Qualified Facilities Program does not meet this requirement. EPA also finds that the Program does not adequately define a

contemporaneous (or simultaneous) period or require that emission reductions occur within a specified period. As discussed above, we find that the Program fails to meet the Minor NSR netting requirement for a defined period in which the reductions must occur.

*Comment:* TIP and BCCA commented that the Qualified Facilities program exceeds Federal benchmarks for allowable-based Minor NSR triggers. This program is one of the mechanisms that EPA encouraged in its Flexible Air Permitting Rule (FAP) (74 FR 51418, 15423). Further, the program is more stringent than the Federal FAP Program because it requires up-to-date BACT. The Qualified Facilities Program is also comparable to the proposed allowables-based minor NSR trigger in EPA's proposed Indian Country rule, in which EPA allows the use of allowables to allowables netting. To justify the use of an allowables test, EPA distinguished the definition of "modification" under Minor NSR from that used for Major NSR. 71 FR 48696, 48701 (*citing State of New York, et al., v. EPA* (DC Cir. Jun. 24, 2005)). The Qualified Facilities rules meet these criteria and are more stringent than the Federal model because it only extends this flexibility to well-controlled facilities.

The commenter reiterates that the Qualified Facilities Program does not effect a permit holder's obligation to comply with Federal requirements. An allowables-based trigger is permissible because the CAA and Federal regulations do not mandate a method for determining minor NSR. The Environmental Appeals Board confirmed that there is no mandated methodology for the emissions test used for minor NSR. *In re Tennessee Valley Authority*, 9 EAD 357, 461 (EAB September 15, 2000). Again, EPA employed an allowables-to-allowables test in its proposed Indian Country rule. States have great flexibility to determine applicability for Minor NSR and that includes the authority to use an allowables-based trigger. TCEQ rules articulate an overriding obligation to comply with Federal requirements. 30 TAC 116.117(a)(4) and (d). Therefore, the current Qualified Facilities rules prevent circumvention of Major NSR.

*Response:* EPA disagrees with the commenter. This rulemaking disapproves netting under the Qualified Facilities Program for Major NSR, in part because the Program fails to first require a Major NSR applicability demonstration to show that a proposed change does not trigger Major NSR before the source can take advantage of the Program. In contrast to the Qualified Facilities Program, under the proposed

Indian Country rule, 40 CFR 49.153 would explicitly require the proposed new source or modification to determine applicability to Major NSR before taking advantage of the program. The source could only use allowables netting under the proposed Indian Country rule after a Major NSR applicability determination. *See* 71 FR 48696, at 48705, 48728–48729. The Qualified Facilities rules are deficient because they lack such a requirement. Further, as described above, the Program fails to meet several other netting requirements for an approvable Minor NSR netting program.

EPA's FAP rule is an Operating permit under Title V, not Title I. 74 FR 51418, 51419. While the FAP rule recognizes the use of advance approval programs under Minor NSR, the use of such programs must ensure environmental protection and compliance with applicable laws. "[FAPs] cannot circumvent, modify, or contravene any applicable requirement and, instead, by their design must assure compliance with each one as it would become applicable to any authorized changes." *See* 74 FR 51418, 51422. Further, advance approval under the FAP must be made at the time of permit issuance, and consider the alternate operating scenarios for air quality impacts, control technology, compliances with applicable requirements, etc. Under Major and Minor NSR, advance approval must ensure compliance with control strategy and non-interference with attainment and maintenance of NAAQS for each operating scenario as required by 40 CFR 51.160. We do not see how the Texas Qualified Facility Rule meets these requirements.

#### *D. Comments Addressing Whether the Qualified Facilities Rules Are Practically Enforceable*

##### 1. Comments Generally Supporting Proposal

*Comment:* The UT Environmental Clinic commented that the rules fail to ensure that netted reductions are enforceable.

*Response:* We agree with the commenter that the Program is unenforceable because it fails to explicitly require that a permit application must be submitted for the change and for any relied-upon emissions reductions in the netting analysis. Because the Program is an exemption from a preconstruction permit, and does not require a permit, the Program must qualify as a *de minimis* exemption to be approvable. We find that the Program does not

qualify as a *de minimis* exemption from Minor NSR. The legal test for whether a *de minimis* threshold can be approved is whether it is consistent with the need for a plan to include legally enforceable procedures to ensure that the State will not permit a source that will violate the control strategy or interfere with NAAQS attainment, as required by 40 CFR 51.160(a)–(b). 74 FR 48450, at 48460. The State failed to demonstrate that this exemption will not permit changes that will violate the Texas control strategies or interfere with NAAQS attainment. Therefore all of the requirements under 40 CFR 51.160(a)–(b) apply to the Program.

Additionally, the Program allows too long of a lag time before a revised permit is issued in certain circumstances that can lead to a violation of a NAAQS, RFP, or control strategy without the TCEQ becoming aware of it in a timely manner. We proposed that the lag time for reporting a change under the Program should be no longer than six months, rather than a year, but we requested comment on whether six months is an acceptable lapse of time to ensure noninterference with the NAAQS and control strategies. 74 FR 48450, at 48462. We received no comments on this issue except that TCEQ stated they will consider this change during rulemaking. Therefore, we find that the Program allows too long of a lag time before reporting “qualified” changes.

*Comment:* The UT Environmental Clinic commented that the Program is clearly inadequate to ensure protection of the NAAQS and PSD increments and to prevent violations of control strategies.

*Response:* EPA agrees a Minor NSR SIP must include legally enforceable procedures enabling the State to determine whether construction or modification would violate a control strategy or interfere with attainment or maintenance of the NAAQS. 40 CFR 51.160(a)–(b). Furthermore, any Minor NSR SIP revision submittal that is a SIP relaxation, such as this Qualified Facilities Program, must meet section 110(l). The Qualified Facilities SIP submittal is a relaxation under CAA section 110(l) because it provides an exemption from NSR permitting not previously available to sources. This SIP relaxation creates a risk of interference with NAAQS attainment, RFP, or any other requirement of the Act. EPA lacks sufficient available information to determine that this SIP relaxation would not interfere with any applicable requirement concerning attainment and RFP, or any other requirement of the Act. See 74 FR 48450, at 48463.

## 2. Comments Generally Opposing Proposal

*Comment:* ERCC commented that the Qualified Facilities Program is enforceable for several reasons. The program’s regulations include enforceable registration and recordkeeping requirements. Documentation must be maintained for all Qualified Facility changes that describes the change and demonstrates compliance with the Qualified Facility Program as well as state and Federal law. See 30 TAC 116.117(a). TCEQ regulations also require that, at a minimum, an annual submission is made to the agency documenting any qualified facility changes not incorporated into a facility permit. See 30 TAC 116.117(b). Pre-change qualification and approval are required for certain changes including: changes that affect BACT or where MAERT is not available (30 TAC 116.118); certain intraplant trading (30 TAC 116.117(4)); or if the change will affect compliance with a permit condition (30 TAC 116.117(3)). EPA’s general comments questioning the proper permit application or registration for qualified facility authorization are unclear given the minor source nature of the program and its function as an exemption from a preconstruction permit. See 74 FR 48450, at 48462. The Program adequately imposes recordkeeping, reporting, notification and approval regulations to satisfy the minor NSR enforceability requirements.

*Comment:* TIP and BCCA also commented in response to EPA’s argument that the Qualified Facilities Program is not enforceable because changes are not reflected in a permit. The program is a minor NSR triggering program. Instead of permit revision, a facility qualified to invoke the program must notify TCEQ of changes under the Qualified Facilities rules. 30 TAC 116.118. The commenters explain the scenarios when notification is required and the requirements for effective notification under the rules. Commenters also state that if a change implicates a permit special condition, the permit holder must revise its permit special condition using the procedures specified in Chapter 116, New Source Review. 30 TAC 116.116(b)(3).

*Comment:* The TxOGA commented that the Qualified Facilities Program is a minor NSR triggering provision that requires facilities to retain documentation and notify TCEQ of changes under the program. A facility must be qualified at the time the change is to occur. The program is enforceable

because the rules contain notification and recordkeeping requirements.

*Response:* EPA disagrees with the commenters. The Program does not meet the Federal requirements for practical enforceability. To be approvable, a Minor NSR program must include enforceable emissions limits. See 74 FR 48450, at 48462. The Program is not clear that each Qualified Facility involved in the netting transaction must submit a permit application and obtain a permit revision reflecting all of the changes made to reduce emissions (relied upon in the netting analysis) as well as reflecting the change itself that increased emissions. See 74 FR 48450, at 48462. Therefore, the Program is unenforceable. Additionally, the Program allows too long of a lag time before a revised permit is issued in certain circumstances that can lead to a violation of a NAAQS, RFP, or control strategy without the TCEQ becoming aware of it in a timely manner. Because the Program is an exemption from a preconstruction permit, and does not require a permit, the Program must qualify as a *de minimis* exemption to be approvable. We find that the Program does not qualify as an approvable *de minimis* exemption from Minor NSR. See 74 FR 48450, at 48462; Section V.D.1. above. Therefore all of the requirements under 40 CFR 51.160(a)–(b) apply to the Program. As described throughout this notice, the Qualified Facilities Program fails to meet all of these requirements. See 74 FR 48450, at 48460. As stated above, the Program fails to require a permit that reflects all of the changes that occurred in the netting process and provides enforceable emissions limits. The notification and recordkeeping requirements, while beneficial, are not sufficient under Federal requirements to ensure enforceability.

## E. Comments Addressing Whether the Qualified Facilities Rules Meet Federal Requirements for Major New Source Review

### 1. Comments Generally Supporting Proposal

*Comment:* The UT Environmental Clinic comments that nothing in the Qualified Facility statute or rules limits applicability to minor modifications. The rules require documentation at the plant site sufficient to comply with Nonattainment NSR and PSD, but do not clarify that changes that constitute a major modification cannot be made through a Qualified Facility change.

The commenter further stated that because the Qualified Facilities rules can be used to authorize major

modifications, the rules fail to meet the substantive requirements of Nonattainment NSR and PSD. For emission increases associated with PSD, the Qualified Facilities rules fail to require: (1) Best Available Control Technology; (2) an air quality analysis of impacts on the NAAQS and PSD increments; and (3) additional impact analysis associated with the implementation of the new source or modification. For emission increases associated with Nonattainment NSR, the Qualified Facilities rules fail to require: (1) Lowest Achievable Emission Rate; (2) emission offsets; and (3) demonstration of compliance by other facilities in the State.

*Response:* These comments are consistent with EPA's analysis concluding that Texas's Qualified Facilities Program does not meet Major NSR Substantive requirements as discussed at 74 FR 48450, at 48458–48459.

EPA agrees that the Program is deficient because it lacks provisions that require a Major NSR applicability determination for a change at a Qualified Facility before it is exempted from the permitting requirements. The Program's regulations do not contain any emission limitations, applicability statement, or regulatory provision restricting the change to Minor NSR. This lack of such express provisions distinguishes the Qualified Facilities Program from the Texas Minor NSR SIP rules for Permits by Rule in Chapter 106 and Standard Permits in Chapter 116, Subchapter F. The Standard Permits rules require a Major NSR applicability determination at 30 TAC 116.610(b), and prohibit circumvention of Major NSR at 30 TAC 116.610(c). Likewise, the Permits by Rule provisions require a Major NSR applicability determination at 30 TAC 106.4(a)(3), and prohibit circumvention of Major NSR at 30 TAC 106.4(b). The absence of these provisions in the Qualified Facilities rules creates an unacceptable ambiguity in the SIP. Therefore, the Program could allow circumvention of Major NSR. *See* 74 FR 48450, at 48456–48458.

EPA also agrees that the Program fails to address the required air quality impacts analysis. The comments concerning BACT, LAER, emissions offsets and a demonstration of compliance by other facilities in the State go beyond EPA's analysis in the proposal and are outside the scope of this rulemaking.

Additionally, section 110(l) of the Act prohibits EPA from approving any revision of a SIP if the revision would interfere with any requirement concerning attainment and RFP, or any

other requirement of the Act. There is not sufficient available information to enable EPA to determine that the submitted Program would not interfere with any requirement concerning attainment and RFP, or any other requirement of the Act. *See* 74 FR 48450, at 48459; and response above.

*Comment:* The Office of the Mayor, City of Houston, Texas, recognizes that the Qualified Facilities Program has no regulatory provisions that clearly prevent the Program from circumventing Major NSR SIP requirements thereby allowing changes at existing facilities to avoid the requirement to obtain preconstruction authorizations. Therefore, major sources of emissions are making major modifications to their facilities without going through the permitting process. The commenter states that this is a fatal flaw in the program, it is inconsistent with the CAA and should not be included in the SIP.

*Response:* The comments by the Office of the Mayor, City of Houston, Texas, are consistent with EPA's conclusions as discussed at 74 FR 48450, at 48456–48457 and response above.

## 2. Comments Generally Opposing Proposal

*Comment:* The TCC comments that Qualified Facilities is a Minor NSR Program because TCEQ's rules clearly require sources making changes under the Program to submit specific documentation, including "sufficient information as necessary to show that the project will comply with 40 CFR 116.150 and 116.151 of this title (relating to Nonattainment Review) and 40 CFR 116.160–116.163 of this title (relating to Prevention of Significant Deterioration Review) and with Subchapter C of this Chapter 116 (relating to Hazardous Air Pollutants: Regulations Governing Constructed or Reconstructed Major Sources (CAA 112(g), 40 CFR Part 63))." 30 TAC 116.117(a)(4).<sup>10</sup>

*Response:* As stated in the above, TCEQ's rules for Qualified Facilities are insufficient to prevent circumvention of major NSR. *See* 74 FR 48450, at 48456–48458.

*Comment:* ERCC commented that the Qualified Facilities Program is limited to Minor NSR. Qualified Facilities mandates compliance with 40 CFR 51.165 and 51.166, by clearly stating

that any change authorized by Qualified Facilities shall not "limit the application of otherwise applicable state or Federal requirements." TCAA 382.0512(c). TCEQ regulations require that Qualified Facilities changes must be documented minor source modifications. *See* 30 TAC 116.117(a)(4); 30 TAC 116.117(d). EPA's dismissal of Section 116.117(a)(4) as a recordkeeping provision is unjustified. 74 FR 48450, at 48457. This Qualified Facilities regulatory reference to the PSD and NNSR programs requires the regulated entity to document that the change is in compliance with the Federal major source permitting programs and in compliance with state and Federal law.

*Response:* As stated above, the Qualified Facilities rules are insufficient to prevent circumvention of Major NSR. 74 FR 48450, at 48456–48458.

Although there are recordkeeping requirements in the Program at submitted 40 TAC 116.117(a)(4) requiring owners and operators to maintain documentation containing sufficient information as may be necessary to demonstrate that the project will comply with the Federal CAA, Title I, parts C and D, these are the same general provisions as those in the SIP at 30 TAC 116.111(a)(2)(H) and (I) for Minor and Major NSR SIP permits. These recordkeeping requirements, although necessary for NSR SIP approvability, cannot substitute for clear and enforceable provisions, consistent with Texas's other Minor NSR programs, that limit applicability in the submitted Program to Minor NSR only. 74 FR 48450, at 48456–48457.

*Comment:* TIP and BCCA comment that sources cannot use the Qualified Facilities Program to circumvent Major NSR. 30 TAC 116.117(a)(4) and (d); *Modification of Existing Facilities Guidance*, at 2. Senate Bill 1126, which authorized the Qualified Facilities program, does not supersede any Federal requirements. Further, "[i]f a change made under the qualified facility flexibility would result in the violation of a permit special condition, the permit holder must revise the permit special conditions to stay in compliance with the permit," through either the permit alteration process under 30 TAC 116.116(c) or the notification process of 30 TAC 116.117(d). *Modification of Existing Facilities Guidance*, at 9. Therefore, any changes to a facility must comply with Federal NSR and PSD rules. To further show that the current Qualified Facilities rules are sufficient to prevent circumvention, commenter cites to EPA's proposed Indian Country rule and recently approved state SIPs that do not contain explicit language

<sup>10</sup>In a separate SIP submittal dated February 1, 2006, Texas recodified the provisions of Subchapter C into Subchapter E. TCEQ's rules also state that nothing in the rules governing the Program shall limit the applicability of any Federal requirement. 30 TAC 116.117(d).

calling for a major NSR applicability determination before use of the minor NSR tools. ALASKA ADMIN. CODE tit. 18, § 50.502, approved 72 FR 45378 (August 14, 2007); 7 DEL. CODE REGS. § 1102, 65 FR 2048 (January 13, 2000) (granting limited approval based on EPA's concerns about public participation provisions). Further, no Federal requirement mandates such language. Therefore, it is arbitrary for EPA to require Texas to include additional language. *CleanCoalition v. TXU Power*, 536 F.3d 469, 472 (5th Cir. 2008).

**Response:** As stated above, EPA finds that the Qualified Facilities regulatory provisions are inadequate to prevent circumvention of Major NSR and limit the Program to minor modifications. TCEQ's rules and guidance are not clear on their face that circumvention of Major NSR requirements is prohibited. EPA does not understand how the permit alteration and notification requirements are relevant to the issue of circumvention of Major NSR. EPA disagrees with the commenter's analogy to the proposed Indian Country Minor NSR rule. Today's rulemaking disapproves the Qualified Facility Program for Major NSR, in part because the Program fails to first require a Major NSR applicability demonstration to show that a proposed change does not trigger Major NSR before the source can take advantage of the Program. In contrast, under the proposed Indian Country rule, 40 CFR 49.153 would explicitly require the proposed new source or modification to determine applicability to Major NSR before taking advantage of the program. 71 FR 48696, at 48705, 48728–48729. The source could only use allowables netting under the proposed Indian Country rule after it determined that Major NSR does not apply to the project. The Qualified Facilities rules are deficient because they lack such a requirement, *i.e.*, that Major NSR does not apply to the change.

**Comment:** The ERCC commented that EPA sent a comment letter on the Qualified Facilities proposed rule and agreed that it “adequately addresses the applicability of major sources and major modifications with respect to PSD and NA permitting requirements.” 21 Tex. Reg. 1569 (February 27, 1996).

**Response:** We acknowledge our 1995 comment letter stating that Texas adequately satisfied our concern that the Qualified Facilities Program, as proposed, would not circumvent or supersede any Major NSR SIP requirements. Since we sent that letter, however, the Texas Legislature has revised the Texas Clean Air Act significantly. Specifically, in 1999, the

Texas legislature added an explicit statutory prohibition against the use of an Exemption or Permit by Rule or a Standard Permit for major modifications. See Texas Health and Safety Code 382.05196 and .057. These 1999 legislative actions required a new legal review of the statutory definition for “modification of existing facility” to see if it was still limited to minor modifications. It is EPA's interpretation that the 1999 legislative changes made this statutory definition ambiguous. 74 FR 48450, at 48456–48457.

#### *F. Comments Addressing Whether the Qualified Facilities Rules Meet Federal Requirements for Minor New Source Review*

##### 1. Comments Generally Supporting Proposal

**Comment:** The UT Environmental Clinic commented that the CAA requires SIPs to include a program for “regulation of the modification and construction of any stationary source.” 42 U.S.C. 110(a)(2)(C). The program must prohibit any sources, including minor sources, from emitting pollution in amounts that contribute significantly to nonattainment and maintenance of the NAAQS or interfere with measures included in the SIP. 42 U.S.C. 110(a)(2)(D)(i)(I)–(II). EPA has recognized the valuable role that Minor NSR programs play in ensuring that air quality is protected from emissions that are not subject to Major NSR. Technical Support Document for the Prevention of Significant Deterioration and Nonattainment Area New Source Review Regulations, U.S. EPA, Nov. 2002, at I–5–I–12. The Qualified Facilities Program is deficient as a Minor NSR program because:

- The Qualified Facility rules do not require enforceable limits. Qualified Facilities provide notification of “qualified” changes on form PI-E,<sup>11</sup> which TCEQ acknowledges is not enforceable. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY *Guidance for Air Quality, Qualified Changes Under Senate Bill 1126* (Dec. 2000), 27 [hereinafter *Qualified Facilities Guidance*]. Without enforceable limits, facilities can use emission reductions as part of a netting analysis and subsequently increase those emissions or rely on these reductions to offset other increases. Some Qualified Facility representations are consolidated into a preexisting permit upon revision or renewal at the discretion of the source. Even if representations in the PI-E were

enforceable, there are no monitoring or reporting requirements to demonstrate compliance. 30 TAC 116.117(a). See 74 FR 48450 (Sept. 23, 2009), Docket, *Technical Support Document*, pg. 22.

- The Qualified Facility Rules do not include a pre-approval mechanism for all authorized emission increases. The rules have no mechanism that prevents implementation of Qualified Facility changes that may violate a control strategy or interfere with attainment or maintenance of the NAAQS. The Program only requires Qualified Facilities to obtain pre-approval of a Qualified Facility change if it involves interplant<sup>12</sup> trading above a “reportable limit.” 30 TAC 116.117(b)(4). Facilities that do not rely on interplant trading are only required to report their changes on an annual basis. 30 TAC 116.117(b)(1).

**Response:** As stated above at Section V.D.1, EPA agrees with the first point that the submitted rules are practically unenforceable because the reductions are not incorporated into a permit. 74 FR 48450, at 48462.

EPA agrees with the commenter that the Program does not include a pre-approval mechanism for all authorized emission increases. Under section 110(a)(2)(A) and (C) of the Act, a Minor NSR SIP must require enforceable emission limits for all minor modifications. The Texas Program is not clear that for each Qualified Facility involved in the netting transaction, the owner or operator must submit a permit application and obtain a permit revision reflecting all of the changes made to reduce emissions (relied upon in the netting analysis) as well as reflecting the change itself that increased emissions. Furthermore, the Program's rules at 30 TAC 116.116(e)(4) and 116.117(b)(1)–(4) are not clear that the PI-E form is a *permit application or registration* that must be submitted and that a revised permit must be issued by TCEQ to reflect the changes made by all of the participating Qualified Facilities. There is no discussion of when TCEQ issues the revised permit. See the submittals at 30 TAC 116.117(b); 74 FR 48450, at 48462.

##### 2. Comments Generally Opposing Proposal

**Comment:** The TCEQ commented that it has always considered the Qualified Facilities Program to be a Minor NSR Program although it is not stated in the rule. The rule requires the person making a change to maintain sufficient documentation to demonstrate that the

<sup>11</sup> 30 TAC § 116.117(b). See regulation text on pages 23–24 of the TSD for this action, which refer to 30 TAC 116.117(b)(2) and (4).

<sup>12</sup> Although the commenter refers to “interplant” trading, the Texas rules referred to by the commenter relates to “intraplant” trading.



project will comply with 30 TAC 116.150 and 116.161 (Nonattainment NSR), 116.160–116.163 (Prevention of Significant Deterioration Review), and Chapter 116, Subchapter C (relating to implementing section 112(g) of the Act. 30 TAC 116.117(a)(4). A major modification may not occur without going through nonattainment or PSD review. If a project is determined to be a major modification, under PSD and/or nonattainment rules,<sup>13</sup> the owner/operator must obtain a Federal NSR permit/major modification. Then Qualified Facilities Program does not impair TCEQ's authority to control air pollution and take action to control a condition of air pollution if TCEQ finds that such a condition exists. Texas Water Code section 5.514. TCEQ commits to work with EPA to improve and clarify the rule language to ensure that the Qualified Facilities Program is specifically limited to Minor NSR changes. Texas comments that it does not apply the Qualified Facilities program to projects that are subject to Major NSR or subject to section 112(g) of the Act.

*Response:* We appreciate TCEQ's willingness to work with EPA to improve and clarify its rules to ensure that the Qualified Facilities Program does not apply to projects that are subject to Major NSR or subject to section 112(g). However, the Program is deficient because it fails to include specific provisions in its rules that assure that the Qualified Facilities Program does not apply to projects that are subject to Major NSR or subject to section 112(g). See 74 FR 48450, at 48456–48457.

*Comment:* ERCC commented that EPA has failed to demonstrate the proposed revisions interfere with Texas's ability to achieve the NAAQS. Specifically:

- Texas requires all air emissions from stationary sources (including minor sources) receive authorization from the State. Texas has developed an extensive program to meet the permitting and resource challenges of this requirement and the State's numerous and varied emission sources. States have discretion under the CAA to implement the state minor source program as long as it does not "interfere with attainment of the NAAQS. Aside from this requirement, which is stated in broad terms, the Act includes no specifics regarding the structure or functioning of minor NSR programs \* \* \* as a result, SIP-approved minor NSR programs can vary quite widely from State to State." *Operating Permit Programs; Flexible Air Permitting Rule;*

*Final Rule*, 74 FR 51,418 at 51,421 (Oct. 6, 2009). Therefore, ERCC requests that EPA re-evaluate and withdraw the proposed disapprovals. Texas air quality has shown dramatic improvement because of the three submitted programs. EPA fails to recognize that these programs are similar to other approved state minor NSR programs.

- EPA's proposed disapprovals do not meet Congress' or the Courts' documented standards for SIP disapproval. The CAA grants EPA authority to disapprove a SIP revision if such revision would interfere with the state's SIP. A revision interferes with the SIP if it impedes the state's ability to achieve the NAAQS. 42 U.S.C. 7410(l); S. Rep. No. 101–228, at 9, 1990 U.S.C.C.A.N. 3385, 3395; and *Train v. NRD*, 421 U.S. 60, 79 (1975). The commenter argues that EPA has the burden to demonstrate that the submittals interfere with the NAAQS, but EPA's proposals shift this burden to Texas. See *Hall v. EPA*, 273 F.3d 1146, 1161 (9th Cir. Cal. 2001) (*citing Train*, 421 U.S. at 93 and *Ober v. Whitman*, 243 F.3d 1190, 1195 (9th Cir. 2001)) (requiring EPA's analysis to "rationally connect" approval of a revision to an area's likelihood of meeting the NAAQS).

- Since their submittal to EPA, the State's implementation of these rules has significantly reduced statewide emissions. These improvements can be demonstrated by reviewing both the records of emissions reductions and the reductions measured by Texas ambient air quality monitors.

ERCC further commented that Qualified Facilities is protective of air quality by limiting the use of this authorization under 30 TAC 116.116(e) and 30 TAC 116.10 (11)(E) and providing incentives to implement emission reductions. Like the Qualified Facilities Program, EPA's proposed Indian Country Minor NSR program is based upon an increase of allowable and not actual emissions. 71 FR 48696, at 48701. The EPA-developed Minor NSR program also utilizes emission rates in lieu of air quality impacts to determine exemptions from the Minor NSR definition of modification because "applicability determinations based on projected air quality impacts would be excessively complex and resource intensive." *Id.* at 48701.

*Response:* We agree that states have great flexibility to create their own Minor NSR SIP programs. However, at a minimum, those Minor NSR SIP programs must meet all of the Federal requirements. Likewise, the Qualified Facilities Program must meet all Federal requirements under the CAA in order to

be approvable. Section V.C.1–2. As discussed throughout our proposal and this final notice, the current Qualified Facilities Program fails to meet all requirements. Moreover, the Qualified Facilities Program would be an exemption from the Texas Minor NSR SIP. The Program does not provide an alternative Minor NSR permit authorization process but instead exempts facilities from obtaining a NSR permit for changes. The State failed to demonstrate that this exemption is *de minimis* and thus that the exempted changes will not violate the Texas control strategies or interfere with NAAQS attainment, as required by section 110(a)(2)(c) and 40 CFR 51.160. 74 FR 48450, at 48460; see also Section V.C.1–2, D.1, and G. of this Response to Comments. Additionally, EPA lacks sufficient available information to determine that the requested SIP revision relaxation does not interfere with any applicable requirements concerning attainment and RFP, or any other applicable requirement of the Act, as required by section 110(l) of the Act. 74 FR 48450, at 48463; see also Section V.D.1.

EPA disagrees with the commenter's analogy to the proposed Indian Country Minor NSR rule. Today's rulemaking disapproves netting under the Qualified Facilities Program for Minor NSR, in part because the Program fails to first require a Major NSR applicability demonstration to show that a proposed change does not trigger Major NSR before the Qualified Facility can take advantage of the Program. The proposed Indian Country rule would explicitly require the proposed new source or modification first determine applicability to Major NSR before taking advantage of the program. 71 FR 48696, at 48705, 48728–48729. The source could only use allowables netting under the proposed Indian Country rule after it determined that Major NSR does not apply to the project. The Qualified Facilities rules are deficient because they lack the requirement for a Major NSR applicability determination, not because the Program allows allowables netting under Minor NSR. Further, while the commenter is correct that the proposed Indian Country rule would allow the use of emissions rates in lieu of air quality impacts, the use of emissions rates is only to establish applicability under Minor NSR. Such an approach is acceptable as long as the program assures protection of the NAAQS. 71 FR 48696, at 48701.

*Comment:* TIP and BCCA commented that SIP revisions are approvable if they do not interfere with the NAAQS. States have the primary responsibility for

<sup>13</sup> 40 CFR 51.165(a)(1)(v).

developing plans for attainment and maintenance of the NAAQS. *See CleanCOALition v. TXU Power*, 536 F.3d 469, 472 n.3 (5th Cir. 2008) (stating that “EPA has no authority to question the wisdom of a State’s choices of emissions limitations if they are part of a SIP that otherwise satisfies the standards set forth in 42 U.S.C. 7401(a)(2)”). The last ten years have seen unprecedented improvement in Texas air quality, and Texas has been implementing the Qualified Facilities program during that time. The submittal does not raise interference concerns because it strengthens the existing SIP; therefore the Qualified Facilities program should be fully approvable. The proposal states that Qualified Facilities lacks safeguards to prevent interference with attainment and maintenance of the NAAQS. The commenters correlate this deficiency with EPA’s comments on two facets of the submittal that EPA proposed to find approvable as long as ambient air is protected in the trading: (1) netting is not based on contemporaneous trading; and (2) the Program’s netting is not based totally on changes in actual emissions. TIP states that the existing Qualified Facilities rules contain adequate safeguards of the NAAQS. Additionally, changes are sufficiently documented and quantified to ensure that a decrease at a facility will only be used in one netting analysis. The provision requires that sources must document compliance with Federal requirements safeguards the NAAQS. Commenter states that Qualified Facilities could be viewed as an exemption to Minor NSR requirements; however, the rules prevent changes that will violate the Texas control strategies or interfere with NAAQS attainment. Qualified Facilities flexibility is only allowed where the change will not result in a net increase above existing BACT, and BACT limits were set to protect the NAAQS. Qualified Facilities incorporates Texas’s control strategies, and therefore, safeguards the NAAQS.

*Response:* As stated above, in order to be approved as part of the SIP, the Qualified Facilities Program must meet all applicable Federal requirements. Here, the commenter’s argument is not supported by the Fifth Circuit’s language in *CleanCOALition*, 536 F.3d at 472 n.3, because the Qualified Facilities Program does not meet 42 U.S.C. 7410(a)(2)(C). EPA agrees with the commenter that the Qualified Facilities Program is an exemption to the Texas Minor NSR SIP (and can be construed to be an exemption to the Texas Major NSR SIP). A requirement

for approval of an exemption to a Minor NSR SIP is a demonstration that the exemption will not permit changes that will violate a state’s control strategies or interfere with NAAQS attainment. Texas failed to submit such a demonstration. In addition, EPA lacks sufficient available information to determine that this SIP relaxation would not interfere with NAAQS attainment, RFP, or any other requirement of the Act. *See* Section V.D.1 above. Furthermore, EPA cannot find any provisions in the Program that require a separate netting analysis be performed for each such change. *See* 74 FR 48450, at 48461–48462. We also find that the Program does not prohibit future increases at a Qualified Facility, or include regulatory language that assures that any future increase at a Qualified Facility at which a previous netting reduction occurred is analyzed in totality to assure that the NAAQS are protected. The Qualified Facilities rules are deficient to protect the NAAQS for the reasons stated above, not because the Program allows allowables netting under Minor NSR. The commenter asserts that these safeguards exist in the Qualified Facilities Program but provides no citation or other basis to support its assertion. Finally, EPA finds that the Texas rules do not specifically require maintenance of information and analysis showing how a source concluded that there will be no adverse impact on air quality. 74 FR 48450, at 48462. The commenter provides no citation or other basis to show how the Qualified Facilities Program meets this requirement.

*Comment:* TxOGA commented that the documentation and notification requirements of 30 TAC 116.117 provide safeguards to ensure that changes will not violate the control strategy or interfere with attainment and maintenance of the NAAQS. Also, Qualified Facilities flexibility is only available where the change will not result in a net increase above BACT levels at well controlled facilities.

*Response:* As stated above, there is not sufficient available information to enable EPA to make a determination pursuant to section 110(l) that the Qualified Facilities Program, as a whole, would not interfere with any applicable requirement concerning attainment and RFP or any other requirement of the Act. Additionally, as required by section 110(a)(2)(C) and 40 CFR 51.160, the State failed to submit information to demonstrate that the Program, as an exemption from the Texas Minor NSR SIP, would not permit a source that will violate the control strategy or interfere

with NAAQS attainment. *See* Section V.D.1 above for more information.

*G. Comments Addressing Whether Existing Qualified Facilities Have Undergone an Air Quality Analysis*

*Comment:* The UT Environmental Clinic disagrees with EPA’s statement in the proposal that any Qualified Facility will have a Major or Minor NSR SIP permit, will have been subject to an air quality analysis, and will have demonstrated that its emissions have no adverse air quality impact. 74 FR 48450, at 48560 (Sept. 23, 2009). A facility can qualify as a Qualified Facility if it uses technology at least as effective as 10-year old BACT, “regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCCA, 382.057.” 30 TAC 116.11(E)(ii). Likewise, the Qualified Facility rules specifically provide for preapproval of Qualified Status of those facilities that do not have an allowable emissions limit in a permit, PI-8 or PI-E form.

The commenter further states that, while Texas rules generally require emissions to have some sort of authorization, the rules do exempt some increases from the definition of “modification,” thereby allowing these emissions to avoid any review. 30 TAC 116.10(11). For emissions that must be permitted, TCEQ’s rules allow the use of various permitting mechanism that do not assure protection of the NAAQS and control strategy requirements. 30 TAC 116.110(a).

The commenter states that the rules additionally provide that unless one “facility” at an account has been subject to public notice under the Chapter 116 permitting or renewal provisions, total emissions from all facilities permitted by rules at an account shall not exceed the limits referenced in 30 TAC 106(a)(4). Because it is rare that at least one facility at an account has not been through public notice, companies are allowed to use multiple permits-by-rule to authorize emissions at a source. *See* UT Environmental Clinic Comment Letter, Attachment 5: Chart of facility PBR authorizations. TCEQ does not analyze the cumulative air quality impact of these multiple authorizations. TCEQ rules require permits-by-rule and standard permits to be “incorporated” into the facility’s permit after the permit is renewed or amended; and there are no rules regarding procedures or modeling for such “incorporation.”

Finally, the commenter stated that TCEQ has issued guidance that requires standard permits and PBRs that “directly affect the emissions of

permitted facilities” to be “consolidated by reference” at renewal or amendment. Texas Commission on Environmental Quality, *Permit by Rule and Standard Permit Consolidation Into Permits* (Sept 1, 2006), 3. Any PBRs and standard permits that do not affect emissions permitted facilities can be incorporated at the discretion of the permittee. *Id.* at 4. The TCEQ guidance requires such PBRs and standard permits that are consolidated by incorporation to undergo an impacts review. Because these permits are renewed every ten years, this review may not occur for many years. Furthermore, PBRs do not require Texas BACT.

*Response:* We agree with the commenter’s assertion that the submitted regulations do not explicitly require an air quality impacts analysis whenever a facility uses technology at least as effective as 10-year old Minor NSR BACT, “regardless of whether the facility has received a preconstruction permit or permit amendment or has been exempted under the TCCA 382.057.” Further, facilities “qualified” using technology at least as effective as 10-year old Minor NSR BACT, must use actual emissions as a baseline. See 30 TAC 116.10(2) and 116.116(e)(2)(C). Presumably, this provision exists because facilities “qualified” under 30 TAC 116.10(11)(E)(ii), would not have a permitted allowable emissions limit because they lack an underlying permit. If a facility could be “qualified” without having a pre-construction permit, then the facility could net-out of permit requirements without ever having an air quality analysis of the baseline allowables limit. TCEQ’s comments, which are summarized below, imply that State law requires all sources in Texas to get an underlying permit, and therefore, receive an air quality impact analysis. However, we view the State’s comment to be vague as to whether a permit is a pre-requisite under the Program itself. Therefore, the Qualified Facilities rules are deficient because they fail to require an underlying Texas NSR SIP permit and air quality impact analysis in order to be “qualified” under the Program.

Comments concerning the State’s permit-by-rule and standard permit programs are outside the scope of this rulemaking.

*Comment:* TCEQ commented that the Texas Legislature created the Qualified Facilities Program to provide flexibility to permitted facilities and to provide a means by which grandfathered facilities could apply control technology and become “qualified” grandfathered facilities without triggering Federal NSR. Subsequently, in 2001, the

legislature required all grandfathered facilities to obtain authorization or shutdown. The program remains in effect as emissions are controlled, no new emissions above existing allowable limits are allowed, and Federal requirements are considered and met.

In summary, the Program reinforced the TCEQ’s duties under the Texas Clean Air Act to protect air quality and control air contaminant emissions by *practical and economically feasible methods*. Tex. Health & Safety Code 382.002, 382.003(9)(e). Therefore, the environment has benefitted from the Program because emissions were controlled prior to the Texas Legislature mandating shut down or obtaining authorization; air quality benefitted as demonstrated by monitoring which measured continued improvement; regulated entities benefitted because they were given flexibility; and the State benefitted by reasonable regulation that encourages responsible economic development.

TCEQ also commented that allowable emissions (both hourly and annual rates) are one of the criteria used to provide “state qualified” flexibility because the facilities must exist and be authorized, and thereby undergone appropriate permit review.

*Response:* As stated above, we find that the Qualified Facilities rules fail to explicitly require a permit before a facility can be “qualified” under the Program. While TCEQ asserts that to become a Qualified Facility, a facility must undergo permit review and be authorized, the State does not cite to any regulatory provision in the Program that explicitly requires such permitting authorization. EPA recognizes that State legislation subsequent to the Qualified Facilities Program required grandfathered facilities to obtain permit authorizations or shut down. There is nothing sufficiently explicit, however, in the Qualified Facilities Rules that ensures all Qualified Facilities received an air quality impacts analysis through an initial permit application review process. It is commendable that TCEQ intends to implement its Qualified Facilities Program in a manner that may benefit the environment, but Texas failed to incorporate these procedures into its regulations; therefore, these procedures are not Federally enforceable.

*H. Comments on the Definitions of “Grandfathered Facility,” “Maximum Allowable Emission Rate Table,” and “New Facility”*

*Comment:* TCEQ and TCC agree with EPA’s proposal to approve the definitions of “grandfathered facility,”

“maximum allowable emission rate table,” and “new facility.” The TCEQ urges EPA to take final action to approve these definitions.

*Response:* These comments further support EPA’s action to approve these definitions.

*I. Comments on the Definitions of “Actual Emissions,” “Allowable Emissions,” “Modification of Existing Facility” at (E), and “Qualified Facility”*

*Comment:* TCEQ confirmed that Senate Bill 1126 amended the Texas Clean Air Act by revising the definition of “modification of existing facility,” which changed the factors used to determine whether a modification for State permitting (*i.e.* Minor NSR) has occurred. In 1996, 30 TAC Chapter 116 was revised to incorporate this legislative directive. These changes provide that modifications may be made to existing facilities without triggering the State’s Minor NSR requirements whenever:

- Authorization for the facility to be modified was issued a permit, permit amendment, or was exempted from permitting requirements within 120 months from when the change will occur; or
- Uses air pollution control methods that are at least as effective as the BACT that was required within 120 months from when the change will occur.

Such facilities are designated as “qualified facilities.” TCEQ considers the use of “modification” to be separate and severable from the Federal definition of “modification” as reflected in the SIP-approved Major NSR Program.

TCEQ further asserts that the definitions of “actual emissions,” “allowable emissions,” “modification of existing facility” at (E) “qualified facility,” respectively at 30 TAC 116.10(1), (2), (11)(E), and (16), meet Federal requirements.

*Response:* We are disapproving these definitions because they are not severable from the Qualified Facilities Program, and the State failed to submit information sufficient to demonstrate how these definitions meet Federal requirements. The definitions of “actual emissions” and “allowable emissions” include a statement that limits these definitions only when determining whether there has been a net increase in allowable emissions under 30 TAC 116.116(e), which implements the Qualified Facilities Program, and thus makes these definitions not severable from the Program. Subsection (E) of the definition of “modification of existing facility” *only* applies to changes that do not result in a net increase in allowable

emissions, which implements the Qualified Facilities Program, and thus makes this subsection not severable from the Program. The definition of “qualified facility” defines a term that is used in the Qualified Facilities Program, which makes it not severable from the Qualified Facilities Program.

Furthermore, the State did not provide sufficient information to demonstrate how these definitions meet Federal requirements. Additionally, State legislative actions in 1999 made the statutory definition of “modification of existing facility” ambiguous as to whether the definition is still limited to minor modifications. The State did not submit any legal support for TCEQ’s assertion that the use of “modification” in the Texas Clean Air Act is for Minor NSR only; and therefore separate and severable from the definition of “modification” in the Texas Major NSR SIP. See 74 FR 48450, at 48456–48457 and Section V.E.2 above for further information.

*J. Comments on the Definition of “Best Available Control Technology” (“BACT”)*

*Comment:* The UT Environmental Clinic, TCC, TIP, BCCA, TxOGA, GCLC, and TCEQ provided comments on EPA’s proposed disapproval of TCEQ’s definition of BACT.

*Response:* We are not taking final action on the definition of BACT in today’s rulemaking; therefore, these comments are outside the scope of our rulemaking. They will be considered, however, in our final action on this definition.

*K. Comments on Severable Portions of the Definition of “Modification of Existing Facility” at 30 TAC 116.10(11)(A) & (B)*

*Comment:* The UT Environmental Clinic, TxOGA, TIP, BCCA, and TCEQ provided comments on EPA’s proposed disapproval of TCEQ’s changes to the definition of “modification of existing facility” at 30 TAC 116.10(11)(A) and (B) regarding insignificant increases.

*Response:* We are not taking final action on 30 TAC 116.10(11)(A) and (B) of the definition of “modification of existing facility” in today’s rulemaking; therefore, these comments are outside the scope of our rulemaking. They, however, will be considered in our final agency action on these two definitions.

*L. Comments on the Definition of Severable Subsection of “Modification of Existing Facility” at 30 TAC 116.10(11)(G)*

*Comment:* The UT Environmental Clinic and TCEQ provided comments on the proposed disapproval of 30 TAC

116.10(11)(G) of the definition of “modification of existing facility.”

*Response:* We are not taking final action on 30 TAC 116.10(11)(G) of the definition of “modification of existing facility” in today’s rulemaking; therefore, these comments are outside the scope of our rulemaking. They will be considered, however, in our final agency action on this definition.

*M. Comments on the Reinstatement of the Previously Approved Definition of “Facility”*

*Comment:* The TCEQ acknowledges that EPA proposes to correct a typographical error in 72 FR 49198 to clarify that the definition of “facility,” as codified at 30 TAC 116.10(6), was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. 74 FR 48450, at 48455 at n.6.

*Response:* EPA thanks TCEQ for its acknowledgement that the definition of “facility” at 30 TAC 116.10(6) was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. We are making the administrative change to correct the typographical error in the Code of Federal Regulations.

In our proposed rule notice, we requested comments on the State’s legal meaning of the term “facility.” See 30 TAC 116.10(6). We stated that the interpretation of this term is critical to our understanding of the Texas Permitting Program. We received the following comments on this issue:

*1. Comments Generally Supporting Proposal*

*Comment:* The UT Environmental Clinic understands that EPA’s proposal is only to correct a typographical error that inadvertently removed the definition of “facility” from the SIP. The commenter notes, however, that Texas’s use of this term is problematic because of its dual definitions and broad meanings. The commenter compares Texas’s definition of “facility” in 30 TAC 116.10 with the definition of “stationary source” in 30 TAC 116.12 and the definition of “building, structure, facility, or installation” in 30 TAC 116.12 and conclude that these definitions are quite similar. The commenters acknowledge that this argument assumes that one can rely on the Nonattainment NSR rules to interpret the general definitions. If one cannot use the Nonattainment NSR definitions to interpret the general definition of “facility,” then one must resort to the definition of “source” in 30 TAC 116.10(17), which is defined as “a point of origin of air contaminants, whether privately or publicly owned or operated.” Pursuant to this reading, a

facility is more like a Federal “emissions unit.” 40 CFR 51.165(a)(1)(vii).

“Emissions unit” means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant ...” At least in the Qualified Facility rules, it appears that TCEQ use of the definition of “facility” is more like a Federal “emissions unit.” The circular nature of these definitions, and the existence of two different definitions of “facility” without clear description of their applicability, makes Texas’s rules, including the Qualified Facility rules, vague. Commenters urge EPA to require Texas to clarify its definition of “facility” and to ensure that its use of the term throughout the rules is consistent with that definition.

*2. Comments Generally Opposing Proposal*

*Comment:* TCEQ responded to EPA’s request concerning its interpretation of Texas law and the Texas SIP with respect to the term “facility.” The definition of “facility” is the cornerstone of the Texas Permitting Program under the Texas Clean Air Act. In addition, to provide clarity and consistency, TCEQ also provides similar comments in regard to Docket ID No. EPA–R06–OAR–2005–TX–0032 and EPA–R06–OAR–2006–0133. EPA believes that the State uses a “dual definition” for the term facility. Under the TCAA and TCEQ rule, “facility” is defined as “a discrete or identifiable structure, device, item, equipment, or enclosure that constitutes or contains a stationary source, including appurtenances other than emission control equipment. Tex. Health & Safety Code 382.003(6); 30 TAC 116.10(6). A mine, quarry, well test, or road is not considered to be a facility.” A facility may contain a stationary source—point of origin of a contaminant. Tex. Health & Safety Code 382.003(12). As a discrete point, a facility can constitute but cannot contain a major stationary source as defined by Federal law. A facility is subject to Major and Minor NSR requirements, depending on the facts of the specific application. Under Major NSR, EPA uses the term “emissions unit” (generally) when referring to a part of a “stationary source,” TCEQ translates “emissions unit” to mean “facility,”<sup>14</sup> which is at least as stringent as Federal rule. TCEQ and its predecessor agencies have consistently interpreted facility to preclude inclusion of more than one stationary source, in contrast to EPA’s stated understanding. Likewise, TCEQ

<sup>14</sup> The term “facility” shall replace the words “emissions unit” in the referenced sections of the CFR. 30 TAC 116.160(c)(3).

does not interpret facility to include “every emissions point on a company site, even if limiting these emission points to only those belonging to the same industrial grouping (SIC Code).” The Federal definition of “major stationary source” is not equivalent to the state definition of “source.” 40 CFR 51.166(b)(1)(a). A “major stationary source”<sup>15</sup> can include more than one “facility” as defined under Texas law—which is consistent with EPA’s interpretation of a “major stationary source” including more than one emissions unit. The above interpretation of “facility” has been consistently applied by TCEQ and its predecessor agencies for more than 30 years. The TCEQ’s interpretation of Texas statutes enacted by the Texas Legislature is addressed by the Texas Code Construction Act. More specifically, words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly. Tex. Gov’t Code 311.011(b). While Texas law does not directly refer to the two steps allowing deference enunciated in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, Texas law and judicial interpretation recognize *Chevron*<sup>16</sup> and follow similar analysis as discussed below. The Texas Legislature intends an agency created to centralize expertise in a certain regulatory area “be given a large degree of latitude in the methods it uses to accomplish its regulatory function.” *Phillips Petroleum Co. v. Comm’n on Env’tl. Quality*, 121 S.W.3d 502, 508 (Tex.App.—Austin 2003, no pet.), which cites *Chevron* to support the following: “Our task is to determine whether an agency’s decision is based upon a permissible interpretation of its statutory scheme.” Further, Texas courts construe the test of an administrative rule under the same principles as if it were a statute. *Texas Gen. Indem. Co. v. Finance Comm’n*, 36 S.W.3d 635, 641

(Tex.App.—Austin 2000, no pet.). Texas Administrative agencies have the power to interpret their own rules, and their interpretation is entitled to great weight and deference. *Id.* The agency’s construction of its rule is controlling unless it is plainly erroneous or inconsistent. *Id.* “When the construction of an administrative regulation rather than a statute is at issue, deference is even more clearly in order.” *Udall v. Tallman*, 380 U.S. 1, 17 (1965). This is particularly true when the rule involves complex subject matter. See *Equitable Trust Co. v. Finance Comm’n*, 99 S.W.3d 384, 387 (Tex.App.—Austin 2003, no pet.). Texas courts recognize that the legislature intends an agency created to centralize expertise in a certain regulatory area “be given a large degree of latitude in the methods it uses to accomplish its regulatory function.” *Reliant Energy, Inc. v. Public Util. Comm’n*, 62 S.W.3d 833, 838 (Tex.App.—Austin 2001, no pet.) (citing *State v. Public Util. Comm’n*, 883 S.W.2d 190, 197 (Tex. 1994). In summary, TCEQ translates “emissions unit” to mean “facility.” Just as an “emissions unit” under Federal law is construed by EPA as part of a major stationary source, a “facility” under Texas law can be a part of a major stationary source. However, a facility cannot include more than one stationary source as defined under Texas law.

*Comment:* TCC, BCCA, TIP, and TxOGA commented that Texas rules are clear that “facility,” as defined in 30 TAC 116.10(6) is equivalent to the TCEQ term “emissions unit.”<sup>17</sup> TCC also stated that the definition of “facility” is so broad that it requires every possible source of air contaminants to obtain some type of approval from TCEQ.

*Response:* We have determined that Texas’s use of this term “facility,” as it applies to the State’s Qualified Facilities Program, is overly vague, and therefore, unenforceable. TCEQ comments that it translates “emissions unit” to mean “facility.” Yet, Texas’s PSD non-PAL rules explicitly limit the definition of “facility” to “emissions unit,” but the Qualified Facilities rules fail to make such a limitation. 74 FR 48450, at 48475; compare 30 TAC 116.10(6) to 30 TAC 116.160(c)(3). The State clearly thought the prudent legal course was to limit “facility” explicitly to “emissions unit” in its PSD SIP non-PALs revision. However, TCEQ did not submit information sufficient to demonstrate that the lack of this explicit limitation in the submitted Qualified Facilities

revisions is at least as stringent as the revised definition in the PSD non-PALs definition.

We recognize that TCEQ should be accorded a level of deference to interpret the State’s statutes and regulations; however, such interpretations must meet applicable requirements of the Act and implementing regulations under 40 CFR part 51 to be approvable into the SIP as Federally enforceable requirements. The State has failed to provide any case law or SIP citation that confirms TCEQ’s interpretation for “facility” under the Qualified Facilities Program that would ensure Federal enforceability.

Nevertheless, as stated above, the definition of “facility” at 30 TAC 116.10(6) was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP. Therefore, EPA is obligated to correct the typographical error and reinstate the definition of “facility” into the Code of Federal Regulations.

However, today’s final disapproval of the Qualified Facilities Program is based in part on the lack of clarity of the definition of “facility” as it applies specifically to this Program.

Additionally, EPA has proposed disapproval of the State’s Flexible Permit Program and NSR Reform SIP submittals partially based on the need for clarity of the definition of “facility” as it applies to those programs.

#### *N. Comments on the Definition of the Term “Air Quality Account Number”*

*Comment:* The TCEQ commented that it no longer uses the term “air quality account number” and now uses the term “account,” which is a SIP-approved definition.<sup>18</sup> Administrative changes to the Qualified Facilities Program are planned to reflect the change in terms.

*Response:* EPA’s evaluation of “account” and “air quality account number” were based upon the SIP-approved definition of “account.” 74 FR 48450, at 48455, n.7. The State’s comment that it no longer uses “air quality account number” but uses “account” does not change EPA’s final decision to disapprove the Qualified Facilities Program SIP revision submittal. In fact, the State’s using a different definition that is not in the Qualified Facilities Program’s rules

<sup>15</sup> Tex. Health & Safety Code § 382.003(12).

<sup>16</sup> *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 387, 842–43 (1984).

“When a court reviews an agency’s construction of the statute which it administers, it is confronted with two questions. First, always is the question whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter, for the court, as well as the agency, must give effect to the unambiguously express intent of Congress. If, however, the court determines Congress has not directly addressed the precise question at issue, the court does not simply impose its own construction on the statute, as would be necessary in the absence of an administrative interpretation. Rather, if the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.”

<sup>17</sup> Additionally, the definition of “facility” is similar to the definition of “emission unit” in Texas’s Title V rules. 30 TAC 122.10(8).

<sup>18</sup> 30 TAC 101.1(1) Account—For those sources required to be permitted under Chapter 122 of this title \* \* \*, all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railways, rights-of-way, waterways, or similar divisions. Approved as part of the Texas SIP at 70 FR 16129 (March 30, 2005).

provides additional grounds for disapproval. The Qualified Facilities Program's rules must be clear about which sources on a site can participate in the netting process. This goes to the heart of whether the changes are made outside a major stationary source. If TCEQ makes the planned changes noted in the comment letter, the changes must be adopted and submitted to EPA for approval as a SIP revision. Upon receipt, we would review the regulatory changes and evaluate whether they meet the Act and EPA regulations.

The Texas SIP defines an "account" to include an entire company site, which could include more than one plant and more than one major stationary source. SIP rule 30 TAC 101.1(1), second sentence. It does not limit the combination of sources to a SIC code. As stated above, EPA interprets the Program to allow an emission increase to net out by taking into account emission decreases outside of the major stationary source. Therefore, the Program does not meet the CAA's definition of "modification" and the Major NSR SIP requirements and is inconsistent with *Asarco v. EPA*, 578 F.2d 320 (DC Cir. 1978), 74 FR 48450, at 48458–48459; Section IV.B. above.

#### *O. Comments on Whether the Qualified Facilities Rules Meet New Source Review Public Participation Requirements*

##### 1. Comments Generally Supporting Proposal

*Comment:* HCPHES commented that the State's public participation rules are not user friendly with regards to timeliness of initial notification and the time restrictions for public comment. Specifically, it is not uncommon for a permit modification or amendment notification to be delayed on occasion, which results in a shorter period for citizens as well as HCPHES to respond. These situations have unduly limited the opportunities for the public and affected agencies to be able to provide meaningful reviews and submit appropriate comments. The commenter supports EPA's conclusion to disapprove portions of the SIP as proposed until such time as TCEQ addresses all of the specifics noted in the **Federal Register**. In addition, HCPHES strongly supports strengthening public participation rules such that Texas citizens are able to participate meaningfully in the process.

*Comment:* Several members of the Texas House commented that while the Qualified Facilities Program was a legislative creation, these members of the Texas House recognize that the

statutory language and associated regulations are inconsistent with current CAA requirements regarding modifications and public participation. A particular concern is inadequate public participation.

*Comment:* HCPHES strongly supports strengthening public participation rules such that Texas citizens are able to participate meaningfully in the process.

*Response:* General comments on Texas's public participation requirements are outside the scope of this rulemaking. However, in a separate action, EPA has proposed a limited approval/limited disapproval of Texas's SIP submittal for public participation (73 FR 72001 (Nov. 26, 2008)). In addition, TCEQ has proposed revisions to these rules and EPA is working with TCEQ to strengthen its rules for public participation to ensure the State's rules comply with all Federal requirements.

##### 2. Comments Generally Opposing Proposal

*Comment:* The UT Environmental Clinic commented that the Qualified Facilities Rules allow industrial plants to make changes that can affect neighboring residents with absolutely no notice or opportunity for participation. These rules allow modifications without meeting the Federal public participation requirements that are applicable to Nonattainment NSR and PSD permits under the Act, 40 CFR 51.161, and 40 CFR 51.166(q). TCEQ's Qualified Facilities guidance specifically states that the qualified facility notification process may be used instead of the alteration process to change permit special conditions. *Qualified Facilities Guidance*, at 14.

*Response:* EPA agrees with the commenter that the Qualified Facilities rules do not meet the Federal public participation requirements for each individual change, either for a Major or Minor NSR SIP revision. As discussed in more detail in Section V.D.1 above, the Program does not clearly require a permit for each change. Therefore, the Program does not provide an opportunity for public review, which circumvents public participation requirements in 40 CFR 51.161. See 74 FR 48450, at 48459–48460.

*Comment:* The UT Environmental Clinic comments that the Texas rules also allow sources to amend terms and conditions of a Major NSR or Minor NSR permit without public participation. EPA has already expressed concerns to Texas about using methods other than permit amendment for making changes to individual NSR permits. Letter to Dan Eden, TCEQ,

Deputy Director, from Carl Edlund, EPA, Region 6, Director, Multimedia Planning and Permitting Division (March 12, 2008), p. 8. Letter to Richard Hyde, TCEQ, Director Air Permits Division from Jeff Robinson, EPA, Chief, Air Permits Section (May 21, 2008), p. 6.

*Response:* The comments that TCEQ's rules allow sources to amend terms and conditions of a Major NSR or Minor NSR permit without public participation and the use of methods other than permit amendments are outside the scope of this rulemaking.

*Comment:* GCLC provided comments on Texas's public participation program because the public participation issues are implicated throughout the three **Federal Register** notices (Qualified Facilities, Flexible Permits, and NSR Reform). GCLC considers these comments timely and appropriate because EPA's proposal directs the public to read the three pending notices and the November 2008 public participation proposal "in conjunction" with each other.

*Response:* We recognize the need to read the notices in conjunction with each other because the permits issued under these State programs are the vehicles for regulating a significant universe of the air emissions from sources in Texas and thus directly impact the ability of the State to achieve and maintain attainment of the NAAQS and to protect the health of the communities where these sources are located. 74 FR 48450, at 48453. However, this final rulemaking only addresses the Qualified Facilities Program. Therefore, specific issues related to the public participation submittal package are outside the scope of this rulemaking.

*Comment:* The ERCC commented that public review requirements have been met because the implementing regulations for Qualified Facilities were subject to notice and comment. Proposed on 20 Tex. Reg. 8308 (October 10, 1995) finalized on 21 Tex. Reg. 1569 (February 27, 1996).

*Response:* EPA agrees with the commenter that the Qualified Facilities rules met the public participation requirements for SIP revision submittals. EPA, however, disagrees with the commenter that the permit application public participation requirements of this submitted Qualified Facilities program meets the NSR public participation requirements for individual permit applications. Where the adopted State rules fail to provide for the minimum public participation required under Federal law for individual permit applications,

Federal public participation requirements cannot be considered met just because the deficient State rules were adopted after public notice and comment. Please see our comments above.

## VI. Final Action

EPA is disapproving revisions to the SIP submitted by the State of Texas that relate to the Modification of Qualified Facilities, identified in the Table in section III.B of this action. These affected provisions include the following regulations under Chapter 116: 30 TAC 116.116(e), 30 TAC 116.117, 30 TAC 116.118, and the following definitions under 30 TAC 116.10—General Definitions: 30 TAC 116.10(1)—definition of “actual emissions,” 30 TAC 116.10(2)—definition of “allowable emissions,” 30 TAC 116.10(11)(E) under the definition of “modification of existing facility,” and 30 TAC 116.10(16)—definition of “qualified facility.” EPA finds that these submitted provisions and definitions in the submitted Texas Qualified Facilities Program are not severable from each other.

EPA is disapproving the submitted Texas Qualified Facilities Program as a substitute Major NSR SIP revision because it does not meet the Act and EPA’s regulations. We are also disapproving the submitted Qualified Facilities Program as a Minor NSR SIP revision because it does not meet the Act and EPA’s regulations.

The Qualified Facilities Program submittals do not meet the requirements for a substitute Major NSR SIP revisions because (1) the Program does not prevent circumvention of Major NSR; (2) the State failed to submit information sufficient to demonstrate that the Program’s regulatory text requires an evaluation of Major NSR applicability before a change is exempted from permitting; (3) the Program is deficient for Major NSR netting because (a) it authorizes the use of allowable, rather than actual emissions, to be used as a baseline to determine applicability. This use of allowables violates the Act and Major NSR SIP requirements and is contrary to *New York v. EPA*, 413 F.3d 3, 38–40 (DC Cir. 2005) (“New York I”) and (b) it could allow an emission increase to net out by taking into account emission decreases outside of the major stationary source and, in other circumstances, allow an evaluation of emissions of a subset of units at a major stationary source; and (4) there is not sufficient available information to enable EPA to make a determination that the requested SIP revision relaxation would not

interfere with any applicable requirements concerning attainment, RFP, or any other applicable CAA requirement, as required by section 110(l).

The Qualified Facilities Program submittals do not meet the requirements for a Minor NSR SIP revision. The submitted Program (1) fails to ensure that the Major NSR SIP requirements continue to be met; (2) is not limited only to Minor NSR; (3) fails to include sufficient legally enforceable safeguards to ensure that the NAAQS and control strategies are protected; (4) the State failed to demonstrate that the Program’s exemption from the Texas Minor NSR SIP includes legally enforceable procedures to ensure that the State will not permit a source that will violate the NAAQS or the State’s control strategies; (5) the submitted Program does not provide clear and enforceable requirements for a basic Minor NSR netting program; and (6) EPA lacks sufficient information to make a determination that the requested SIP revision relaxation does not interfere with any applicable requirements concerning attainment and RFP, or any other applicable requirement of the Act, as required by section 110(l). Therefore, we are disapproving the submitted Qualified Facilities Program as a Minor NSR SIP revision because it does not meet sections 110(a)(2)(C) and 110(l) of the Act and 40 CFR 51.160.

EPA is approving the submitted definitions for “grandfathered facility,” “maximum allowable emissions rate table (MAERT),” and “new facility.” Finally, EPA is finalizing an administrative correction in today’s action by specifically correcting a typographical error at 72 FR 49198 to clarify that the definition of “facility” as codified at 30 TAC 116.10(6) was approved as part of the Texas SIP in 2006 and remains part of the Texas SIP.

## VII. Statutory and Executive Order Reviews

### A. Executive Order 12866, Regulatory Planning and Review

This final action has been determined not to be a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993).

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act

will not in-and-of itself create any new information collection burdens but simply disapproves certain State requirements for inclusion into the SIP. Burden is defined at 5 CFR 1320.3(b). Because this final action does not impose an information collection burden, the Paperwork Reduction Act does not apply.

### C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. For purposes of assessing the impacts of today’s rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This rule will not have a significant impact on a substantial number of small entities because SIP approvals and disapprovals under section 110 and part D of the Clean Air Act do not create any new requirements but simply approve or disapprove requirements that the States are already imposing.

Furthermore, as explained in this action, the submissions do not meet the requirements of the Act and EPA cannot approve the submissions. The final disapproval will not affect any existing State requirements applicable to small entities in the State of Texas. Federal disapproval of a State submittal does not affect its State enforceability. After considering the economic impacts of today’s rulemaking on small entities, and because the Federal SIP disapproval does not create any new requirements or impact a substantial number of small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such



grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 7410(a)(2).

#### *D. Unfunded Mandates Reform Act*

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 “for State, local, or tribal governments or the private sector.” EPA has determined that the disapproval action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action determines that pre-existing requirements under State or local law should not be approved as part of the Federally approved SIP. It imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### *E. Executive Order 13132, Federalism*

Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” “Policies that have Federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.”

This action does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely disapproves certain State requirements for inclusion into the SIP and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this action.

#### *F. Executive Order 13175, Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (59 FR 22951, November 9, 2000), because the SIP EPA is disapproving would not apply in Indian country located in the State, and EPA

notes that it will not impose substantial direct costs on tribal governments or preempt tribal law. This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. This action does not involve or impose any requirements that affect Indian Tribes. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997). This SIP disapproval under section 110 and subchapter I, part D of the Clean Air Act will not in-and-of itself create any new regulations but simply disapproves certain State requirements for inclusion into the SIP.

#### *H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use*

This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the Office of Management and Budget, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

The EPA believes that this action is not subject to requirements of Section 12(d) of NTTAA because application of those requirements would be inconsistent with the Clean Air Act. Today’s action does not require the public to perform activities conducive to the use of VCS.

#### *J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, (February 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA lacks the discretionary authority to address environmental justice in this action. In reviewing SIP submissions, EPA’s role is to approve or disapprove state choices, based on the criteria of the Clean Air Act. Accordingly, this action merely disapproves certain State requirements for inclusion into the SIP under section 110 and subchapter I, part D of the Clean Air Act and will not in-and-of itself create any new requirements. Accordingly, it does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898.

#### *K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *L. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by *June 14, 2010*. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not

be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon Monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 31, 2010.

**Al Armendariz,**

*Regional Administrator, Region 6.*

■ 40 CFR part 52 is amended as follows:

#### **PART 52—[AMENDED]**

■ 1. The authority citation for part 52 continues to read as follows:

*Authority:* 42 U.S.C. 7410 *et seq.*

#### **Subpart SS—Texas**

■ 2. The table in § 52.2270(c) entitled “EPA-Approved Regulations in the Texas SIP” is amended by revising the entry for section 116.10 to read as follows:

#### **§ 52.2270 Identification of plan.**

\* \* \* \* \*

(c) \* \* \*

#### **EPA-APPROVED REGULATIONS IN THE TEXAS SIP**

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
<b>Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification</b>				
<b>Subchapter A—Definitions</b>				
Section 116.10 .....	General Definitions	8/21/2002	4/14/2010 [Insert FR page number where document begins].	The SIP does not include paragraphs (1), (2), (3), (7)(F), (11), and (16).
*	*	*	*	*

■ 3. Section 52.2273 is amended by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

#### **§ 52.2273 Approval status.**

\* \* \* \* \*

(b) EPA is disapproving the Texas SIP revision submittals as follows:

(1) The following definitions in 30 TAC 116.10—General Definitions:

(i) Definition of “actual emissions” in 30 TAC 116.10(1), submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998;

(ii) Definition of “allowable emissions” in 30 TAC 116.10(2),

submitted March 13, 1996; repealed and re-adopted June 17, 1998 and submitted July 22, 1998; and submitted September 11, 2000;

(iii) Portion of the definition of “modification of existing facility” in 30 TAC 116.10(11)(E), submitted March 13, 1996; repealed and re-adopted June 17, 1998 and submitted July 22, 1998; and submitted September 4, 2002; and

(iv) Definition of “qualified facility” in 30 TAC 116.10(16), submitted March 13, 1996; repealed and re-adopted June 17, 1998 and submitted July 22, 1998; and submitted September 4, 2002;

(2) 30 TAC 116.116(e)—Changes at Qualified Facilities—submitted March

13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998;

(3) 30 TAC 116.117—Documentation and Notification of Changes to Qualified Facilities—submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998;

(4) 30 TAC 116.118—Pre-Change Qualification—submitted March 13, 1996 and repealed and re-adopted June 17, 1998 and submitted July 22, 1998.

[FR Doc. 2010–8019 Filed 4–13–10; 8:45 am]

**BILLING CODE 6560–50–P**



# Federal Register

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**Wednesday,  
April 14, 2010**

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## **Part III**

## **Department of Education**

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**Overview Information; Race to the Top  
Fund; Notice Inviting Applications for  
New Awards for Fiscal Year (FY) 2010;  
Notice**

## DEPARTMENT OF EDUCATION

### Overview Information; Race to the Top Fund; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2010

Catalog of Federal Domestic Assistance (CFDA) Number: 84.395A.

#### Dates:

*Applications Available:* April 14, 2010.

*Deadline for Notice of Intent to Apply for Phase 2:* May 4, 2010.

#### Date of Meeting for Potential

*Applicants:* The Department intends to hold one technical assistance planning workshop. The workshop will be held in Minneapolis, Minnesota, on April 21, 2010. We recommend that applicants attend this workshop.

*Deadlines for Transmittal of Phase 2 Applications:* June 1, 2010. Phase 2 applicants addressing selection criterion (B)(1)(ii)(b) may amend their June 1, 2010 application submission through August 2, 2010 by submitting evidence of having adopted common standards after June 1, 2010. No other information may be submitted after June 1, 2010 in an amended application.

*Deadlines for Intergovernmental Review:*

*Phase 2 Applications:* August 2, 2010.

### Full Text of Announcement

#### I. Funding Opportunity Description

*Purpose of Program:* The purpose of the Race to the Top Fund, a competitive grant program authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), is to encourage and reward States that are creating the conditions for education innovation and reform; achieving significant improvement in student outcomes, including making substantial gains in student achievement, closing achievement gaps, improving high school graduation rates, and ensuring student preparation for success in college and careers; and implementing ambitious plans in four core education reform areas:

- (a) Adopting internationally-benchmarked standards and assessments that prepare students for success in college and the workplace;
- (b) Building data systems that measure student success and inform teachers and principals in how they can improve their practices;
- (c) Increasing teacher effectiveness and achieving equity in teacher distribution; and
- (d) Turning around our lowest-achieving schools.

*Priorities:* These priorities are from the notice of final priorities, requirements, definitions, and selection

criteria for this program, published in the **Federal Register** on November 18, 2009 (74 FR 59688).

*Absolute Priority:* For FY 2010, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority. Applicants should address this priority throughout their applications.

#### Priority 1: Absolute Priority—Comprehensive Approach to Education Reform

To meet this priority, the State's application must comprehensively and coherently address all of the four education reform areas specified in the ARRA as well as the State Success Factors Criteria in order to demonstrate that the State and its participating LEAs are taking a systemic approach to education reform. The State must demonstrate in its application sufficient LEA participation and commitment to successfully implement and achieve the goals in its plans; and it must describe how the State, in collaboration with its participating LEAs, will use Race to the Top and other funds to increase student achievement, decrease the achievement gaps across student subgroups, and increase the rates at which students graduate from high school prepared for college and careers.

*Competitive Preference Priority:* For FY 2010, this priority is a competitive preference priority. Under 34 CFR 75.105(c)(2)(i), we award 15 additional points to applications that meet this priority. Applicants should address this priority throughout their applications.

#### Priority 2: Competitive Preference Priority—Emphasis on Science, Technology, Engineering, and Mathematics (STEM)

To meet this priority, the State's application must have a high-quality plan to address the need to (i) offer a rigorous course of study in mathematics, the sciences, technology, and engineering; (ii) cooperate with industry experts, museums, universities, research centers, or other STEM-capable community partners to prepare and assist teachers in integrating STEM content across grades and disciplines, in promoting effective and relevant instruction, and in offering applied learning opportunities for students; and (iii) prepare more students for advanced study and careers in the sciences, technology, engineering, and mathematics, including by addressing the needs of underrepresented groups and of women and girls in the areas of science, technology, engineering, and mathematics.

*Invitational Priorities:* For FY 2010, these priorities are invitational priorities. With an invitational priority, we signal our interest in receiving applications that meet the priority; however, consistent with 34 CFR 75.105(c)(1), we do not give an application that meets an invitational priority preference over other applications.

#### Priority 3: Invitational Priority—Innovations for Improving Early Learning Outcomes

The Secretary is particularly interested in applications that include practices, strategies, or programs to improve educational outcomes for high-need students who are young children (pre-kindergarten through third grade) by enhancing the quality of preschool programs. Of particular interest are proposals that support practices that (i) improve school readiness (including social, emotional, and cognitive); and (ii) improve the transition between preschool and kindergarten.

#### Priority 4: Invitational Priority—Expansion and Adaptation of Statewide Longitudinal Data Systems

The Secretary is particularly interested in applications in which the State plans to expand statewide longitudinal data systems to include or integrate data from special education programs, English language learner programs,<sup>1</sup> early childhood programs, at-risk and dropout prevention programs, and school climate and culture programs, as well as information on student mobility, human resources (*i.e.*, information on teachers, principals, and other staff), school finance, student health, postsecondary education, and other relevant areas, with the purpose of connecting and coordinating all parts of the system to allow important questions related to policy, practice, or overall effectiveness to be asked, answered, and incorporated into effective continuous improvement practices.

The Secretary is also particularly interested in applications in which States propose working together to adapt one State's statewide longitudinal data system so that it may be used, in whole or in part, by one or more other States, rather than having each State build or continue building such systems independently.

<sup>1</sup> The term English language learner, as used in this notice, is synonymous with the term limited English proficient, as defined in section 9101 of the ESEA.

*Priority 5: Invitational Priority—P–20 Coordination, Vertical and Horizontal Alignment*

The Secretary is particularly interested in applications in which the State plans to address how early childhood programs, K–12 schools, postsecondary institutions, workforce development organizations, and other State agencies and community partners (e.g., child welfare, juvenile justice, and criminal justice agencies) will coordinate to improve all parts of the education system and create a more seamless preschool-through-graduate school (P–20) route for students. Vertical alignment across P–20 is particularly critical at each point where a transition occurs (e.g., between early childhood and K–12, or between K–12 and postsecondary/careers) to ensure that students exiting one level are prepared for success, without remediation, in the next. Horizontal alignment, that is, coordination of services across schools, State agencies, and community partners, is also important in ensuring that high-need students (as defined in this notice) have access to the broad array of opportunities and services they need and that are beyond the capacity of a school itself to provide.

*Priority 6: Invitational Priority—School-Level Conditions for Reform, Innovation, and Learning*

The Secretary is particularly interested in applications in which the State's participating LEAs (as defined in this notice) seek to create the conditions for reform and innovation as well as the conditions for learning by providing schools with flexibility and autonomy in such areas as—

- (i) Selecting staff;
- (ii) Implementing new structures and formats for the school day or year that result in increased learning time (as defined in this notice);
- (iii) Controlling the school's budget;
- (iv) Awarding credit to students based on student performance instead of instructional time;
- (v) Providing comprehensive services to high-need students (as defined in this notice) (e.g., by mentors and other caring adults; through local partnerships with community-based organizations, nonprofit organizations, and other providers);
- (vi) Creating school climates and cultures that remove obstacles to, and actively support, student engagement and achievement; and
- (vii) Implementing strategies to effectively engage families and communities in supporting the academic success of their students.

**Final Requirements:** The following requirements are from the notice of final priorities, requirements, definitions, and selection criteria, published in the **Federal Register** on November 18, 2009 (74 FR 59688) and the interim final requirements published in the **Federal Register** on April 2, 2010 (75 FR 16668).

**Application Requirements:**

(a) The State's application must be signed by the Governor, the State's chief school officer, and the president of the State board of education (if applicable). States will respond to this requirement in the application, Section III, Race to the Top Application Assurances. In addition, the assurances in Section IV must be signed by the Governor.

(b) The State must describe the progress it has made over the past several years in each of the four education reform areas (as described in criterion (A)(3)(i)).

(c) The State must include a budget that details how it will use grant funds and other resources to meet targets and perform related functions (as described in criterion (A)(2)(i)(d)), including how it will use funds awarded under this program to—

(1) Achieve its targets for improving student achievement and graduation rates and for closing achievement gaps (as described in criterion (A)(1)(iii)); the State must also describe its track record of improving student progress overall and by student subgroup (as described in criterion (A)(3)(ii)); and

(2) Give priority to high-need LEAs (as defined in this notice), in addition to providing 50 percent of the grant to participating LEAs (as defined in this notice) based on their relative shares of funding under Part A of Title I of the Elementary and Secondary Education Act of 1965 (ESEA) for the most recent year as required under section 14006(c) of the ARRA. (**Note:** Because all Race to the Top grants will be made in 2010, relative shares will be based on total funding received in FY 2009, including both the regular Title I, Part A appropriation and the amount made available by the ARRA).

(d) The State must provide, for each State Reform Conditions Criterion (listed in this notice) that it chooses to address, a description of the State's current status in meeting that criterion and, at a minimum, the information requested as supporting evidence for the criterion and the performance measures, if any (see Appendix A).

(e) The State must provide, for each Reform Plan Criterion (listed in this notice) that it chooses to address, a detailed plan for use of grant funds that includes, but need not be limited to—

(1) The key goals;

(2) The key activities to be undertaken and rationale for the activities, which should include why the specific activities are thought to bring about the change envisioned and how these activities are linked to the key goals;

(3) The timeline for implementing the activities;

(4) The party or parties responsible for implementing the activities;

(5) The information requested in the performance measures, where applicable (see Appendix A), and where the State proposes plans for reform efforts not covered by a specified performance measure, the State is encouraged to propose performance measures and annual targets for those efforts; and

(6) The information requested as supporting evidence, if any, for the criterion, together with any additional information the State believes will be helpful to peer reviewers in judging the credibility of the State's plan.

(f) The State must submit a certification from the State Attorney General that—

(1) The State's description of, and statements and conclusions concerning State law, statute, and regulation in its application are complete, accurate, and constitute a reasonable interpretation of State law, statute, and regulation; and

(2) At the time the State submits its application, the State does not have any legal, statutory, or regulatory barriers at the State level to linking data on student achievement or student growth to teachers and principals for the purpose of teacher and principal evaluation.

(g) When addressing issues relating to assessments required under the ESEA or subgroups in the selection criteria, the State must meet the following requirements:

(1) For student subgroups with respect to the National Assessment of Educational Progress (NAEP), the State must provide data for the NAEP subgroups described in section 303(b)(2)(G) of the National Assessment of Educational Progress Authorization Act (20 U.S.C. 9622) (i.e., race, ethnicity, socioeconomic status, gender, disability, and limited English proficiency). The State must also include the NAEP exclusion rate for students with disabilities and the exclusion rate for English language learners, along with clear documentation of the State's policies and practices for determining whether a student with a disability or an English language learner should participate in the NAEP and whether the student needs accommodations;

(2) For student subgroups with respect to high school graduation rates,

college enrollment and credit accumulation rates, and the assessments required under the ESEA, the State must provide data for the subgroups described in section 1111(b)(2)(C)(v)(II) of the ESEA (*i.e.*, economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency); and

(3) When asked to provide information regarding the assessments required under the ESEA, States should refer to section 1111(b)(3) of the ESEA; in addition, when describing this assessment data in the State's application, the State should note any factors (*e.g.*, changes in cut scores) that would impact the comparability of data from one year to the next.

*Program Requirements:*

*Evaluation:* The Institute of Education Sciences (IES) will conduct a series of national evaluations of Race to the Top's State grantees as part of its evaluation of programs funded under the ARRA. The Department's goal for these evaluations is to ensure that its studies not only assess program impacts, but also provide valuable information to State and local educators to help inform and improve their practices.

The Department anticipates that the national evaluations will involve such components as—

- Surveys of States, LEAs, and/or schools, which will help identify how program funding is spent and the specific efforts and activities that are underway within each of the four education reform areas and across selected ARRA-funded programs;
- Case studies of promising practices in States, LEAs, and/or schools through surveys and other mechanisms; and
- Evaluations of outcomes, focusing on student achievement and other performance measures, to determine the impact of the reforms implemented under Race to the Top.

Race to the Top grantee States are not required to conduct independent evaluations, but may propose, within their applications, to use funds from Race to the Top to support such evaluations. Grantees must make available, through formal (*e.g.*, peer-reviewed journals) or informal (*e.g.*, newsletters, Web sites) mechanisms, the results of any evaluations they conduct of their funded activities. In addition, as described elsewhere in this notice and regardless of the final components of the national evaluation, Race to the Top States, LEAs, and schools are expected to identify and share promising practices, make work available within and across States, and make data available in appropriate ways to

stakeholders and researchers so as to help all States focus on continuous improvement in service of student outcomes.

*Participating LEA Scope of Work:* The agreements signed by participating LEAs (as defined in this notice) must include a scope-of-work section. The scope of work submitted by LEAs and States as part of their Race to the Top applications will be preliminary. Preliminary scopes of work should include the portions of the State's proposed reform plans that the LEA is agreeing to implement. If a State is awarded a Race to the Top grant, its participating LEAs (as defined in this notice) will have up to 90 days to complete final scopes of work, which must contain detailed work plans that are consistent with their preliminary scopes of work and with the State's grant application, and should include the participating LEAs' specific goals, activities, timelines, budgets, key personnel, and annual targets for key performance measures.

*Making Work Available:* Unless otherwise protected by law or agreement as proprietary information, the State and its subgrantees must make any work (*e.g.*, materials, tools, processes, systems) developed under its grant freely available to others, including but not limited to by posting the work on a website identified or sponsored by the Department.

*Technical Assistance:* The State must participate in applicable technical assistance activities that may be conducted by the Department or its designees.

*State Summative Assessments:* No funds awarded under this competition may be used to pay for costs related to statewide summative assessments.

*Budget Requirements:* For Phase 2 of the Fiscal Year 2010 competition, and for any subsequent competitions, the State's budget must conform to the following budget ranges:<sup>2</sup>

*Category 1—\$350–700 million:* California, Texas, New York, Florida.

*Category 2—\$200–400 million:* Illinois, Pennsylvania, Ohio, Georgia, Michigan, North Carolina, New Jersey.

*Category 3—\$150–250 million:* Virginia, Arizona, Indiana, Washington,

Tennessee, Massachusetts, Missouri, Maryland, Wisconsin.

*Category 4—\$60–175 million:* Minnesota, Colorado, Alabama, Louisiana, South Carolina, Puerto Rico, Kentucky, Oklahoma, Oregon, Connecticut, Utah, Mississippi, Iowa, Arkansas, Kansas, Nevada.

*Category 5—\$20–75 million:* New Mexico, Nebraska, Idaho, West Virginia, New Hampshire, Maine, Hawaii, Rhode Island, Montana, Delaware, South Dakota, Alaska, North Dakota, Vermont, Wyoming, District of Columbia.

The State should develop a budget that is appropriate for the plan it outlines in its application; however we will not consider a State's application if its request exceeds the maximum in its budget range.

*Program Definitions:* These definitions are from the notice of final priorities, requirements, definitions, and selection criteria for this program, published in the **Federal Register** on November 18, 2009 (74 FR 59688).

*Alternative routes to certification* means pathways to certification that are authorized under the State's laws or regulations, that allow the establishment and operation of teacher and administrator preparation programs in the State, and that have the following characteristics (in addition to standard features such as demonstration of subject-matter mastery, and high-quality instruction in pedagogy and in addressing the needs of all students in the classroom including English language learners and student with disabilities): (a) Can be provided by various types of qualified providers, including both institutions of higher education and other providers operating independently from institutions of higher education; (b) are selective in accepting candidates; (c) provide supervised, school-based experiences and ongoing support such as effective mentoring and coaching; (d) significantly limit the amount of coursework required or have options to test out of courses; and (e) upon completion, award the same level of certification that traditional preparation programs award upon completion.

*College enrollment* refers to the enrollment of students who graduate from high school consistent with 34 CFR 200.19(b)(1) and who enroll in an institution of higher education (as defined in section 101 of the Higher Education Act, Public Law 105–244, 20 U.S.C. 1001) within 16 months of graduation.

*Common set of K–12 standards* means a set of content standards that define what students must know and be able to do and that are substantially identical

<sup>2</sup> The Department developed budget ranges for each State by ranking every State according to its share of the national population of children ages 5 through 17 based on data from "Estimates of the Resident Population by Selected Age Groups for the United States, States, and Puerto Rico: July 1, 2008" released by the Population Division of the U.S. Census Bureau. The Department identified the natural breaks in the population data and then developed overlapping budget ranges for each category taking into consideration the total amount of funds available for awards.

across all States in a consortium. A State may supplement the common standards with additional standards, provided that the additional standards do not exceed 15 percent of the State's total standards for that content area.

*Effective principal* means a principal whose students, overall and for each subgroup, achieve acceptable rates (e.g., at least one grade level in an academic year) of student growth (as defined in this notice). States, LEAs, or schools must include multiple measures, provided that principal effectiveness is evaluated, in significant part, by student growth (as defined in this notice). Supplemental measures may include, for example, high school graduation rates and college enrollment rates, as well as evidence of providing supportive teaching and learning conditions, strong instructional leadership, and positive family and community engagement.

*Effective teacher* means a teacher whose students achieve acceptable rates (e.g., at least one grade level in an academic year) of student growth (as defined in this notice). States, LEAs, or schools must include multiple measures, provided that teacher effectiveness is evaluated, in significant part, by student growth (as defined in this notice). Supplemental measures may include, for example, multiple observation-based assessments of teacher performance.

*Formative assessment* means assessment questions, tools, and processes that are embedded in instruction and are used by teachers and students to provide timely feedback for purposes of adjusting instruction to improve learning.

*Graduation rate* means the four-year or extended-year adjusted cohort graduation rate as defined by 34 CFR 200.19(b)(1).

*Highly effective principal* means a principal whose students, overall and for each subgroup, achieve high rates (e.g., one and one-half grade levels in an academic year) of student growth (as defined in this notice). States, LEAs, or schools must include multiple measures, provided that principal effectiveness is evaluated, in significant part, by student growth (as defined in this notice). Supplemental measures may include, for example, high school graduation rates; college enrollment rates; evidence of providing supportive teaching and learning conditions, strong instructional leadership, and positive family and community engagement; or evidence of attracting, developing, and retaining high numbers of effective teachers.

*Highly effective teacher* means a teacher whose students achieve high rates (e.g., one and one-half grade levels in an academic year) of student growth (as defined in this notice). States, LEAs, or schools must include multiple measures, provided that teacher effectiveness is evaluated, in significant part, by student growth (as defined in this notice). Supplemental measures may include, for example, multiple observation-based assessments of teacher performance or evidence of leadership roles (which may include mentoring or leading professional learning communities) that increase the effectiveness of other teachers in the school or LEA.

*High-minority school* is defined by the State in a manner consistent with its Teacher Equity Plan. The State should provide, in its Race to the Top application, the definition used.

*High-need LEA* means an LEA (a) that serves not fewer than 10,000 children from families with incomes below the poverty line; or (b) for which not less than 20 percent of the children served by the LEA are from families with incomes below the poverty line.

*High-need students* means students at risk of educational failure or otherwise in need of special assistance and support, such as students who are living in poverty, who attend high-minority schools (as defined in this notice), who are far below grade level, who have left school before receiving a regular high school diploma, who are at risk of not graduating with a diploma on time, who are homeless, who are in foster care, who have been incarcerated, who have disabilities, or who are English language learners.

*High-performing charter school* means a charter school that has been in operation for at least three consecutive years and has demonstrated overall success, including (a) substantial progress in improving student achievement (as defined in this notice); and (b) the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school.

*High-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the highest quartile of schools in the State with respect to poverty level, using a measure of poverty determined by the State.

*High-quality assessment* means an assessment designed to measure a student's knowledge, understanding of, and ability to apply, critical concepts through the use of a variety of item types and formats (e.g., open-ended responses, performance-based tasks). Such assessments should enable

measurement of student achievement (as defined in this notice) and student growth (as defined in this notice); be of high technical quality (e.g., be valid, reliable, fair, and aligned to standards); incorporate technology where appropriate; include the assessment of students with disabilities and English language learners; and to the extent feasible, use universal design principles (as defined in section 3 of the Assistive Technology Act of 1998, as amended, 29 U.S.C. 3002) in development and administration.

*Increased learning time* means using a longer school day, week, or year schedule to significantly increase the total number of school hours to include additional time for (a) instruction in core academic subjects, including English; reading or language arts; mathematics; science; foreign languages; civics and government; economics; arts; history; and geography; (b) instruction in other subjects and enrichment activities that contribute to a well-rounded education, including, for example, physical education, service learning, and experiential and work-based learning opportunities that are provided by partnering, as appropriate, with other organizations; and (c) teachers to collaborate, plan, and engage in professional development within and across grades and subjects.<sup>3</sup>

*Innovative, autonomous public schools* means open enrollment public schools that, in return for increased accountability for student achievement (as defined in this notice), have the flexibility and authority to define their instructional models and associated curriculum; select and replace staff; implement new structures and formats for the school day or year; and control their budgets.

*Instructional improvement systems* means technology-based tools and other strategies that provide teachers,

<sup>3</sup> Research supports the effectiveness of well-designed programs that expand learning time by a minimum of 300 hours per school year. (See Frazier, Julie A.; Morrison, Frederick J. "The Influence of Extended-year Schooling on Growth of Achievement and Perceived Competence in Early Elementary School." Child Development. Vol. 69 (2), April 1998, pp. 495–497 and research done by Mass2020.) Extending learning into before- and after-school hours can be difficult to implement effectively, but is permissible under this definition with encouragement to closely integrate and coordinate academic work between in-school and out-of school. (See James-Burdumy, Susanne; Dynarski, Mark; Deke, John. "When Elementary Schools Stay Open Late: Results from The National Evaluation of the 21st Century Community Learning Centers Program." [http://www.mathematica-mpr.com/publications/redirect\\_PubsDB.asp?strSite=http://epa.sagepub.com/cgi/content/abstract/29/4/296](http://www.mathematica-mpr.com/publications/redirect_PubsDB.asp?strSite=http://epa.sagepub.com/cgi/content/abstract/29/4/296). Educational Evaluation and Policy Analysis, Vol. 29 (4), December 2007, Document No. PP07–121.)



principals, and administrators with meaningful support and actionable data to systemically manage continuous instructional improvement, including such activities as: Instructional planning; gathering information (e.g., through formative assessments (as defined in this notice), interim assessments (as defined in this notice), summative assessments, and looking at student work and other student data); analyzing information with the support of rapid-time (as defined in this notice) reporting; using this information to inform decisions on appropriate next instructional steps; and evaluating the effectiveness of the actions taken. Such systems promote collaborative problem-solving and action planning; they may also integrate instructional data with student-level data such as attendance, discipline, grades, credit accumulation, and student survey results to provide early warning indicators of a student's risk of educational failure.

*Interim assessment* means an assessment that is given at regular and specified intervals throughout the school year, is designed to evaluate students' knowledge and skills relative to a specific set of academic standards, and produces results that can be aggregated (e.g., by course, grade level, school, or LEA) in order to inform teachers and administrators at the student, classroom, school, and LEA levels.

*Involved LEAs* means LEAs that choose to work with the State to implement those specific portions of the State's plan that necessitate full or nearly-full statewide implementation, such as transitioning to a common set of K–12 standards (as defined in this notice). Involved LEAs do not receive a share of the 50 percent of a State's grant award that it must subgrant to LEAs in accordance with section 14006(c) of the ARRA, but States may provide other funding to involved LEAs under the State's Race to the Top grant in a manner that is consistent with the State's application.

*Low-minority school* is defined by the State in a manner consistent with its Teacher Equity Plan. The State should provide, in its Race to the Top application, the definition used.

*Low-poverty school* means, consistent with section 1111(h)(1)(C)(viii) of the ESEA, a school in the lowest quartile of schools in the State with respect to poverty level, using a measure of poverty determined by the State.

*Participating LEAs* means LEAs that choose to work with the State to implement all or significant portions of the State's Race to the Top plan, as specified in each LEA's agreement with

the State. Each participating LEA that receives funding under Title I, Part A will receive a share of the 50 percent of a State's grant award that the State must subgrant to LEAs, based on the LEA's relative share of Title I, Part A allocations in the most recent year, in accordance with section 14006(c) of the ARRA. Any participating LEA that does not receive funding under Title I, Part A (as well as one that does) may receive funding from the State's other 50 percent of the grant award, in accordance with the State's plan.

*Persistently lowest-achieving schools* means, as determined by the State: (i) Any Title I school in improvement, corrective action, or restructuring that (a) Is among the lowest-achieving five percent of Title I schools in improvement, corrective action, or restructuring or the lowest-achieving five Title I schools in improvement, corrective action, or restructuring in the State, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years; and (ii) Any secondary school that is eligible for, but does not receive, Title I funds that (a) Is among the lowest-achieving five percent of secondary schools or the lowest-achieving five secondary schools in the State that are eligible for, but do not receive, Title I funds, whichever number of schools is greater; or (b) Is a high school that has had a graduation rate as defined in 34 CFR 200.19(b) that is less than 60 percent over a number of years.

To identify the lowest-achieving schools, a State must take into account both (i) The academic achievement of the "all students" group in a school in terms of proficiency on the State's assessments under section 1111(b)(3) of the ESEA in reading/language arts and mathematics combined; and (ii) The school's lack of progress on those assessments over a number of years in the "all students" group.

*Rapid-time*, in reference to reporting and availability of locally collected school- and LEA-level data, means that data are available quickly enough to inform current lessons, instruction, and related supports.

*Student achievement* means—

(a) For tested grades and subjects: (1) A student's score on the State's assessments under the ESEA; and, as appropriate, (2) other measures of student learning, such as those described in paragraph (b) of this definition, provided they are rigorous and comparable across classrooms.

(b) For non-tested grades and subjects: Alternative measures of student learning

and performance such as student scores on pre-tests and end-of-course tests; student performance on English language proficiency assessments; and other measures of student achievement that are rigorous and comparable across classrooms.

*Student growth* means the change in student achievement (as defined in this notice) for an individual student between two or more points in time. A State may also include other measures that are rigorous and comparable across classrooms.

*Total revenues available to the State* means either (a) projected or actual total State revenues for education and other purposes for the relevant year; or (b) projected or actual total State appropriations for education and other purposes for the relevant year.

*America COMPETES Act elements* means (as specified in section 6401(e)(2)(D) of that Act): (1) A unique statewide student identifier that does not permit a student to be individually identified by users of the system; (2) student-level enrollment, demographic, and program participation information; (3) student-level information about the points at which students exit, transfer in, transfer out, drop out, or complete P–16 education programs; (4) the capacity to communicate with higher education data systems; (5) a State data audit system assessing data quality, validity, and reliability; (6) yearly test records of individual students with respect to assessments under section 1111(b) of the ESEA (20 U.S.C. 6311(b)); (7) information on students not tested by grade and subject; (8) a teacher identifier system with the ability to match teachers to students; (9) student-level transcript information, including information on courses completed and grades earned; (10) student-level college readiness test scores; (11) information regarding the extent to which students transition successfully from secondary school to postsecondary education, including whether students enroll in remedial coursework; and (12) other information determined necessary to address alignment and adequate preparation for success in postsecondary education.

*Program Authority:* American Recovery and Reinvestment Act of 2009, Division A, Section 14006, Public Law 111–5.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The notice of final priorities, requirements, definitions, and selection criteria, published in the **Federal Register** on

November 18, 2009 (74 FR 59688). (c) The interim final requirements published in the **Federal Register** on April 2, 2010 (75 FR 16668).

## II. Award Information

*Type of Award:* Discretionary grant.  
*Estimated Available Funds for Phase 2:* \$3.4 billion.

*Estimated Range of Awards:* \$20 million–\$700 million.

*Maximum Award:* \$700 million. As indicated in the budget requirements listed elsewhere in this notice, we will not consider a State's application if its budget request exceeds the maximum in its budget range. Each State's budget range is listed in this notice.

**Note:** The Department is not bound by any estimates in this notice. The Department will decide on the size of each State's award based on a detailed review of the budget the State requests, considering such factors as the size of the State, level of LEA participation, and the proposed activities.

*Project Period:* Up to 48 months.

## III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants are the 50 States, the District of Columbia, and Puerto Rico (referred to in this notice as State).

A State must meet the following requirements in order to be eligible to receive funds under this program.

(a) The State's applications for funding under Phase 1 and Phase 2 of the State Fiscal Stabilization Fund program must be approved by the Department prior to the State being awarded a Race to the Top grant.

(b) At the time the State submits its application, there must not be any legal, statutory, or regulatory barriers at the State level to linking data on student achievement (as defined in this notice) or student growth (as defined in this notice) to teachers and principals for the purpose of teacher and principal evaluation.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

## IV. Application and Submission Information

### 1. Address to Request Application Package:

You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: <http://www.ed.gov/programs/racetothetop/index.html>. To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827.

FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can also contact ED Pubs at its Web site: <http://www.ed.gov/pubs/edpubs.html> or at its e-mail address: [edpubs@inet.ed.gov](mailto:edpubs@inet.ed.gov).

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA 84.395A.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person listed under *For Further Information Contact* in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of the application, together with the forms States must submit, are in the application package for this competition.

*Page Limit:* The application narrative (Section VI) is where the applicant addresses the selection criteria that reviewers use to evaluate applications. The Department recommends that applicants limit their narrative responses in Section VI of the application to no more than 100 pages of State-authored text, and limit their appendices to no more than 250 pages. The following standards are recommended:

- A “page” is 8.5” x 11”, on one side only, with 1” margins at the top, bottom, and both sides.
- Each page is numbered.
- Line spacing is set to 1.5 spacing, and the font used is 12 point Times New Roman.

### 3. Submission Dates and Times:

*Applications Available:* April 14, 2010.

*Deadline for Notice of Intent to Apply:* The Department will be able to develop a more efficient process for reviewing grant applications if we have a better understanding of the number of applications we will receive. Therefore, we strongly encourage each potential applicant to send an e-mail notice of its intent to apply for funding for Phase 2 to the e-mail address [Racetothetop@ed.gov](mailto:Racetothetop@ed.gov) by May 4, 2010. The notice of intent to apply is optional; States may still submit applications if they have not notified the Department of their intention to apply.

*Date of Meeting for Potential Applicants:*

To assist States in preparing the application and to respond to questions, the Department intends to host a Technical Assistance Planning Workshop for potential Phase 2 applicants. The workshop will be held

in Minneapolis, Minnesota on April 21, 2010.

The purpose of the workshop is for Department staff to review the selection criteria, requirements, and priorities with teams of participants responsible for drafting State applications; for Department staff to answer technical questions about the Race to the Top program; and for potential Phase 2 applicants to hear from and ask questions of successful Phase 1 applicants. The Department plans to release more details regarding the workshop in early April. Updates will be available at the Race to the Top Web site <http://www.ed.gov/programs/racetothetop>. Attendance at the workshop is strongly encouraged. For those who cannot attend, transcripts of the meeting will be available on our Web site. Announcements of any other conference calls or Webinars and Frequently Asked Questions will also be available on the Race to the Top Web site.

### *Deadline for Transmittal of Applications:*

*Phase 2 Applications:* June 1, 2010. Phase 2 applicants addressing selection criterion (B)(1)(ii)(b) may amend their June 1, 2010 application submissions through August 2, 2010 by submitting evidence of having adopted common standards after June 1, 2010. No other information may be submitted in an amended application after June 1, 2010.

### *Deadlines for Intergovernmental Review:*

*Phase 2 Applications:* August 2, 2010.

Applications for grants under this competition, as well as any amendments regarding adoption of common standards that Phase 2 applicants may file after June 1 and through August 2, 2010, must be submitted in electronic format on a CD or DVD, with CD-ROM or DVD-ROM preferred. In addition, States must submit an original and one hard copy of Sections III and IV of the application, which include the Race to the Top Application Assurances and the Accountability, Transparency, Reporting and Other Assurances. Emailed submissions will not be read. For information (including dates and times) about how to submit your electronic application, please refer to section IV.6, *Other Submission Requirements* in this notice. Evidence, if any, of adoption of common standards submitted after June 1, 2010, but by August 2, 2010, must be submitted using the same submission process described in section IV.

*Application and Submission Information* of this notice.

The Department will not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under *For Further Information Contact* in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review*: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions*: We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements*: Applications for grants under this competition must be submitted by mail or hand delivery. The Department strongly recommends the use of overnight mail. Applications postmarked on the deadline date but arriving late will not be read.

a. *Application Submission Format and Deadline*. Applications for grants under this competition, as well as any amendments regarding adoption of common standards that Phase 2 applicants may file after June 1 and through August 2, 2010, must be submitted in electronic format on a CD or DVD, with CD-ROM or DVD-ROM preferred. In addition, they must submit a signed original of Sections III and IV of the application and one copy of that signed original. Sections III and IV of the application include the Race to the Top Application Assurances and the Accountability, Transparency, Reporting and Other Assurances.

All electronic application files must be in a .DOC (document), .DOCX (document), .RTF (rich text), or .PDF (Portable Document) format. Each file name should clearly identify the part of the application to which the content is responding. If a State submits a file type other than the four file types specified in this paragraph, the Department will not review that material. States should not password-protect these files.

The CD or DVD should be clearly labeled with the State's name and any other relevant information.

The Department must receive all grant applications by 4:30:00 p.m.,

Washington DC time, on the application deadline date. We will not accept an application for this competition after 4:30:00 p.m., Washington, DC time, on the application deadline date.

Therefore, we strongly recommend that applicants arrange for mailing or hand delivery of their applications in advance of the application deadline date.

b. *Submission of Applications by Mail*. States may submit their application (*i.e.*, the CD or DVD, the signed original of Sections III and IV of the application, and the copy of that original) by mail (either through the U.S. Postal Service or a commercial carrier). We must receive the applications on or before the application deadline date. Therefore, to avoid delays, we strongly recommend sending applications via overnight mail. Mail applications to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.395A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

If we receive an application after the application deadline, we will not consider that application.

c. *Submission of Applications by Hand Delivery*. States may submit their application (*i.e.*, the CD or DVD, the signed original of Sections III and IV of the application, and the copy of that original) by hand delivery (including via a courier service). We must receive the applications on or before the application deadline date, at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.395A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays. If we receive an application after the application deadline, we will not consider that application.

d. *Envelope requirements and receipt*: When an applicant submits its application, whether by mail or hand delivery—

(1) It must indicate on the envelope that the CFDA number of the competition under which it is submitting its application is 84.395A; and

(2) The Application Control Center will mail to the applicant a notification of receipt of the grant application. If the applicant does not receive this notification, it should call the U.S. Department of Education Application Control Center at (202) 245–6288.

In accordance with EDGAR § 75.216(b) and (c), an application will not be evaluated for funding if the applicant does not comply with all of the procedural rules that govern the submission of the application or the application does not contain the information required under the program.

## V. Application Review Information

*Selection Criteria*: The selection criteria and scoring rubric for this competition are from the notice of final priorities, requirements, definitions, and selection criteria, published in the **Federal Register** on November 18, 2009 (75 FR 59688). The reviewers will utilize the scoring rubric (which can also be found in Appendix B of this notice) in applying the following selection criteria:

### A. State Success Factors

(A)(1) *Articulating State's education reform agenda and LEAs' participation in it*: The extent to which—

(i) The State has set forth a comprehensive and coherent reform agenda that clearly articulates its goals for implementing reforms in the four education areas described in the ARRA and improving student outcomes statewide, establishes a clear and credible path to achieving these goals, and is consistent with the specific reform plans that the State has proposed throughout its application;

(ii) The participating LEAs (as defined in this notice) are strongly committed to the State's plans and to effective implementation of reform in the four education areas, as evidenced by Memoranda of Understanding (MOUs) (as set forth in Appendix D)<sup>4</sup> or other binding agreements between the State and its participating LEAs (as defined in this notice) that include—

(a) Terms and conditions that reflect strong commitment by the participating LEAs (as defined in this notice) to the State's plans;

(b) Scope-of-work descriptions that require participating LEAs (as defined in this notice) to implement all or significant portions of the State's Race to the Top plans; and

(c) Signatures from as many as possible of the LEA superintendent (or equivalent), the president of the local school board (or equivalent, if applicable), and the local teachers' union leader (if applicable) (one signature of which must be from an authorized LEA representative) demonstrating the extent of leadership

<sup>4</sup> See Appendix D for more on participating LEA MOUs and for a model MOU.

support within participating LEAs (as defined in this notice); and

(iii) The LEAs that are participating in the State's Race to the Top plans (including considerations of the numbers and percentages of participating LEAs, schools, K–12 students, and students in poverty) will translate into broad statewide impact, allowing the State to reach its ambitious yet achievable goals, overall and by student subgroup, for—

(a) Increasing student achievement in (at a minimum) reading/language arts and mathematics, as reported by the NAEP and the assessments required under the ESEA;

(b) Decreasing achievement gaps between subgroups in reading/language arts and mathematics, as reported by the NAEP and the assessments required under the ESEA;

(c) Increasing high school graduation rates (as defined in this notice); and

(d) Increasing college enrollment (as defined in this notice) and increasing the number of students who complete at least a year's worth of college credit that is applicable to a degree within two years of enrollment in an institution of higher education.

(A)(2) *Building strong statewide capacity to implement, scale up, and sustain proposed plans:* The extent to which the State has a high-quality overall plan to—

(i) Ensure that it has the capacity required to implement its proposed plans by—

(a) Providing strong leadership and dedicated teams to implement the statewide education reform plans the State has proposed;

(b) Supporting participating LEAs (as defined in this notice) in successfully implementing the education reform plans the State has proposed, through such activities as identifying promising practices, evaluating these practices' effectiveness, ceasing ineffective practices, widely disseminating and replicating the effective practices statewide, holding participating LEAs (as defined in this notice) accountable for progress and performance, and intervening where necessary;

(c) Providing effective and efficient operations and processes for implementing its Race to the Top grant in such areas as grant administration and oversight, budget reporting and monitoring, performance measure tracking and reporting, and fund disbursement;

(d) Using the funds for this grant, as described in the State's budget and accompanying budget narrative, to accomplish the State's plans and meet its targets, including, where feasible, by

coordinating, reallocating, or repurposing education funds from other Federal, State, and local sources so that they align with the State's Race to the Top goals; and

(e) Using the fiscal, political, and human capital resources of the State to continue, after the period of funding has ended, those reforms funded under the grant for which there is evidence of success; and

(ii) Use support from a broad group of stakeholders to better implement its plans, as evidenced by the strength of statements or actions of support from—

(a) The State's teachers and principals, which include the State's teachers' unions or statewide teacher associations; and

(b) Other critical stakeholders, such as the State's legislative leadership; charter school authorizers and State charter school membership associations (if applicable); other State and local leaders (e.g., business, community, civil rights, and education association leaders); Tribal schools; parent, student, and community organizations (e.g., parent-teacher associations, nonprofit organizations, local education foundations, and community-based organizations); and institutions of higher education.

(A)(3) *Demonstrating significant progress in raising achievement and closing gaps:* The extent to which the State has demonstrated its ability to—

(i) Make progress over the past several years in each of the four education reform areas, and used its ARRA and other Federal and State funding to pursue such reforms;

(ii) Improve student outcomes overall and by student subgroup since at least 2003, and explain the connections between the data and the actions that have contributed to—

(a) Increasing student achievement in reading/language arts and mathematics, both on the NAEP and on the assessments required under the ESEA;

(b) Decreasing achievement gaps between subgroups in reading/language arts and mathematics, both on the NAEP and on the assessments required under the ESEA; and

(c) Increasing high school graduation rates.

## B. Standards and Assessments

### State Reform Conditions Criteria

(B)(1) *Developing and adopting common standards:* The extent to which the State has demonstrated its commitment to adopting a common set of high-quality standards, evidenced by (as set forth in Appendix B)—

(i) The State's participation in a consortium of States that—

(a) Is working toward jointly developing and adopting a common set of K–12 standards (as defined in this notice) that are supported by evidence that they are internationally benchmarked and build toward college and career readiness by the time of high school graduation; and

(b) Includes a significant number of States; and

(ii)(a) For Phase 1 applications, the State's high-quality plan demonstrating its commitment to and progress toward adopting a common set of K–12 standards (as defined in this notice) by August 2, 2010, or, at a minimum, by a later date in 2010 specified by the State, and to implementing the standards thereafter in a well-planned way; or

(b) For Phase 2 applications, the State's adoption of a common set of K–12 standards (as defined in this notice) by August 2, 2010, or, at a minimum, by a later date in 2010 specified by the State in a high-quality plan toward which the State has made significant progress, and its commitment to implementing the standards thereafter in a well-planned way.<sup>5</sup>

(B)(2) *Developing and implementing common, high-quality assessments:* The extent to which the State has demonstrated its commitment to improving the quality of its assessments, evidenced by (as set forth in Appendix B) the State's participation in a consortium of States that—

(i) Is working toward jointly developing and implementing common, high-quality assessments (as defined in this notice) aligned with the consortium's common set of K–12 standards (as defined in this notice); and

(ii) Includes a significant number of States.

### Reform Plan Criteria

(B)(3) *Supporting the transition to enhanced standards and high-quality assessments:* The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan for supporting a statewide transition to and implementation of internationally benchmarked K–12 standards that build toward college and career readiness by the time of high school graduation, and high-quality assessments (as defined in this notice) tied to these standards. State or LEA activities might, for example, include: Developing a rollout plan for the standards together with all of their

<sup>5</sup> Phase 2 applicants addressing selection criterion (B)(1)(ii) may amend their June 1, 2010 application submission through August 2, 2010 by submitting evidence of adopting common standards after June 1, 2010.

supporting components; in cooperation with the State's institutions of higher education, aligning high school exit criteria and college entrance requirements with the new standards and assessments; developing or acquiring, disseminating, and implementing high-quality instructional materials and assessments (including, for example, formative and interim assessments (both as defined in this notice)); developing or acquiring and delivering high-quality professional development to support the transition to new standards and assessments; and engaging in other strategies that translate the standards and information from assessments into classroom practice for all students, including high-need students (as defined in this notice).

#### C. Data Systems to Support Instruction State Reform Conditions Criteria

(C)(1) *Fully implementing a statewide longitudinal data system*: The extent to which the State has a statewide longitudinal data system that includes all of the America COMPETES Act elements (as defined in this notice).

#### Reform Plan Criteria

(C)(2) *Accessing and using State data*: The extent to which the State has a high-quality plan to ensure that data from the State's statewide longitudinal data system are accessible to, and used to inform and engage, as appropriate, key stakeholders (e.g., parents, students, teachers, principals, LEA leaders, community members, unions, researchers, and policymakers); and that the data support decision-makers in the continuous improvement of efforts in such areas as policy, instruction, operations, management, resource allocation, and overall effectiveness.<sup>6</sup>

(C)(3) *Using data to improve instruction*: The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan to—

(i) Increase the acquisition, adoption, and use of local instructional improvement systems (as defined in this notice) that provide teachers, principals, and administrators with the information and resources they need to inform and improve their instructional practices, decision-making, and overall effectiveness;

(ii) Support participating LEAs (as defined in this notice) and schools that are using instructional improvement

systems (as defined in this notice) in providing effective professional development to teachers, principals, and administrators on how to use these systems and the resulting data to support continuous instructional improvement; and

(iii) Make the data from instructional improvement systems (as defined in this notice), together with statewide longitudinal data system data, available and accessible to researchers so that they have detailed information with which to evaluate the effectiveness of instructional materials, strategies, and approaches for educating different types of students (e.g., students with disabilities, English language learners, students whose achievement is well below or above grade level).

#### D. Great Teachers and Leaders

##### State Reform Conditions Criteria

(D)(1) *Providing high-quality pathways for aspiring teachers and principals*: The extent to which the State has—

(i) Legal, statutory, or regulatory provisions that allow alternative routes to certification (as defined in this notice) for teachers and principals, particularly routes that allow for providers in addition to institutions of higher education;

(ii) Alternative routes to certification (as defined in this notice) that are in use; and

(iii) A process for monitoring, evaluating, and identifying areas of teacher and principal shortage and for preparing teachers and principals to fill these areas of shortage.

##### Reform Plan Criteria

(D)(2) *Improving teacher and principal effectiveness based on performance*: The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan and ambitious yet achievable annual targets to ensure that participating LEAs (as defined in this notice)—

(i) Establish clear approaches to measuring student growth (as defined in this notice) and measure it for each individual student;

(ii) Design and implement rigorous, transparent, and fair evaluation systems for teachers and principals that (a) differentiate effectiveness using multiple rating categories that take into account data on student growth (as defined in this notice) as a significant factor, and (b) are designed and developed with teacher and principal involvement;

(iii) Conduct annual evaluations of teachers and principals that include

timely and constructive feedback; as part of such evaluations, provide teachers and principals with data on student growth for their students, classes, and schools; and

(iv) Use these evaluations, at a minimum, to inform decisions regarding—

(a) Developing teachers and principals, including by providing relevant coaching, induction support, and/or professional development;

(b) Compensating, promoting, and retaining teachers and principals, including by providing opportunities for highly effective teachers and principals (both as defined in this notice) to obtain additional compensation and be given additional responsibilities;

(c) Whether to grant tenure and/or full certification (where applicable) to teachers and principals using rigorous standards and streamlined, transparent, and fair procedures; and

(d) Removing ineffective tenured and untenured teachers and principals after they have had ample opportunities to improve, and ensuring that such decisions are made using rigorous standards and streamlined, transparent, and fair procedures.

(D)(3) *Ensuring equitable distribution of effective teachers and principals*: The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan and ambitious yet achievable annual targets to—

(i) Ensure the equitable distribution of teachers and principals by developing a plan, informed by reviews of prior actions and data, to ensure that students in high-poverty and/or high-minority schools (both as defined in this notice) have equitable access to highly effective teachers and principals (both as defined in this notice) and are not served by ineffective teachers and principals at higher rates than other students; and

(ii) Increase the number and percentage of effective teachers (as defined in this notice) teaching hard-to-staff subjects and specialty areas including mathematics, science, and special education; teaching in language instruction educational programs (as defined under Title III of the ESEA); and teaching in other areas as identified by the State or LEA.

Plans for (i) and (ii) may include, but are not limited to, the implementation of incentives and strategies in such areas as recruitment, compensation, teaching and learning environments, professional development, and human resources practices and processes.

(D)(4) *Improving the effectiveness of teacher and principal preparation programs*: The extent to which the State

<sup>6</sup> Successful applicants that receive Race to the Top grant awards will need to comply with the Family Educational Rights and Privacy Act (FERPA), including 34 CFR part 99, as well as State and local requirements regarding privacy.

has a high-quality plan and ambitious yet achievable annual targets to—

(i) Link student achievement and student growth (both as defined in this notice) data to the students' teachers and principals, to link this information to the in-State programs where those teachers and principals were prepared for credentialing, and to publicly report the data for each credentialing program in the State; and

(ii) Expand preparation and credentialing options and programs that are successful at producing effective teachers and principals (both as defined in this notice).

(D)(5) *Providing effective support to teachers and principals:* The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan for its participating LEAs (as defined in this notice) to—

(i) Provide effective, data-informed professional development, coaching, induction, and common planning and collaboration time to teachers and principals that are, where appropriate, ongoing and job-embedded. Such support might focus on, for example, gathering, analyzing, and using data; designing instructional strategies for improvement; differentiating instruction; creating school environments supportive of data-informed decisions; designing instruction to meet the specific needs of high-need students (as defined in this notice); and aligning systems and removing barriers to effective implementation of practices designed to improve student learning outcomes; and

(ii) Measure, evaluate, and continuously improve the effectiveness of those supports in order to improve student achievement (as defined in this notice).

#### *E. Turning Around the Lowest-Achieving Schools*

##### State Reform Conditions Criteria

(E)(1) *Intervening in the lowest-achieving schools and LEAs:* The extent to which the State has the legal, statutory, or regulatory authority to intervene directly in the State's persistently lowest-achieving schools (as defined in this notice) and in LEAs that are in improvement or corrective action status.

##### Reform Plan Criteria

(E)(2) *Turning around the lowest-achieving schools:* The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to—

(i) Identify the persistently lowest-achieving schools (as defined in this

notice) and, at its discretion, any non-Title I eligible secondary schools that would be considered persistently lowest-achieving schools (as defined in this notice) if they were eligible to receive Title I funds; and

(ii) Support its LEAs in turning around these schools by implementing one of the four school intervention models (as described in Appendix C): turnaround model, restart model, school closure, or transformation model (provided that an LEA with more than nine persistently lowest-achieving schools may not use the transformation model for more than 50 percent of its schools).

#### *F. General*

##### State Reform Conditions Criteria

(F)(1) *Making education funding a priority:* The extent to which—

(i) The percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2009 was greater than or equal to the percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2008; and

(ii) The State's policies lead to equitable funding (a) between high-need LEAs (as defined in this notice) and other LEAs, and (b) within LEAs, between high-poverty schools (as defined in this notice) and other schools.

(F)(2) *Ensuring successful conditions for high-performing charter schools and other innovative schools:* The extent to which—

(i) The State has a charter school law that does not prohibit or effectively inhibit increasing the number of high-performing charter schools (as defined in this notice) in the State, measured (as set forth in Appendix B) by the percentage of total schools in the State that are allowed to be charter schools or otherwise restrict student enrollment in charter schools;

(ii) The State has laws, statutes, regulations, or guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize, and close charter schools; in particular, whether authorizers require that student achievement (as defined in this notice) be one significant factor, among others, in authorization or renewal; encourage charter schools that serve student populations that are similar to local district student populations, especially relative to high-need students (as defined in this notice); and have closed

or not renewed ineffective charter schools;

(iii) The State's charter schools receive (as set forth in Appendix B) equitable funding, compared to traditional public schools, and a commensurate share of local, State, and Federal revenues;

(iv) The State provides charter schools with funding for facilities (for leasing facilities, purchasing facilities, or making tenant improvements), assistance with facilities acquisition, access to public facilities, the ability to share in bonds and mill levies, or other supports; and the extent to which the State does not impose any facility-related requirements on charter schools that are stricter than those applied to traditional public schools; and

(v) The State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.

(F)(3) *Demonstrating other significant reform conditions:* The extent to which the State, in addition to information provided under other State Reform Conditions Criteria, has created, through law, regulation, or policy, other conditions favorable to education reform or innovation that have increased student achievement or graduation rates, narrowed achievement gaps, or resulted in other important outcomes.

2. *Review and Selection Process:* The Department will screen applications that are received, as described in this notice, by the designated deadline, and will determine which States are eligible based on whether they have met eligibility requirement (b); the Department will not consider further those applicants deemed ineligible under eligibility requirement (b). As discussed below, States will be screened for eligibility under eligibility requirement (a) at the end of the selection process, before they would be granted awards.

The Department intends to use a two-tiered review process to judge the eligible applications. In the initial tier, the reviewers would consider only the written applications; in the finalist tier, reviewers would consider both the written applications and in-person presentations. In both tiers, the Department would use independent reviewers who have been chosen from a pool of qualified educators, scholars, and other individuals knowledgeable in education reform. The Department will thoroughly screen all reviewers for conflicts of interest to ensure a fair and competitive review process.

In the initial tier, reviewers will read, comment on, and score their assigned

applications, using the selection criteria and scoring rubric included in this notice (see Appendix B). The Department will select the finalists after considering the reviewers' scores. The finalists will move on to the finalist tier of the competition. Applicants who do not move on to the finalist tier will receive their reviewers' comments and scores as soon as possible.

The Department intends to ask each finalist to send a team to Washington, DC to present the State's proposal to a panel of reviewers. The panel will take this opportunity to ask the State's team further questions in order to gain a more comprehensive picture of the State's application proposal, including its plans and its capabilities to implement them. (Exact timing will be announced when the finalists are selected.) A State's presentation team may include up to five individuals; because the panel of reviewers is interested primarily in hearing from, and asking questions of, State leaders who would be responsible for implementing the State's Race to the Top plan, only those individuals who would have significant ongoing roles in and responsibilities in executing the State's plan should present, and in no case could presentation teams include consultants. At the conclusion of the presentation process, reviewers will finalize their scoring of the applications based on the selection criteria and scoring rubric in this notice.

After the review process is complete, the Secretary will select, consistent with 34 CFR 75.217, the grantees after considering the rank order of applications, each applicant's status with respect to the Absolute Priority and eligibility requirement (a), and any other relevant information. All applicants will receive their reviewers' comments and scores.

After awards are made for each phase of the competition, all of the submitted applications (both successful and unsuccessful) will be posted on the Department's WebSite, together with the final scores each received. The Department also intends to post on its WebSite a transcript and/or video of each finalist's presentation of its proposal.

States that applied in Phase 1 but were not awarded grants may reapply for funding in Phase 2 (together with those States that are applying for the first time in Phase 2). Phase 1 winners receive full-sized awards, and so do not apply for additional funding in Phase 2.

## VI. Award Administration Information

1. *Award Notices:* If an application is successful, the Department will notify the States' U.S. Representatives and U.S.

Senators and send the applicant a Grant Award Notification (GAN). We may notify the State informally, as well.

If an application is not evaluated or not selected for funding, the Department will notify the State.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates the approved application as part of the binding commitments under the grant.

3. *Reporting:* The following requirements are from the notice of final priorities, requirements, definitions, and selection criteria, published elsewhere in this issue of the **Federal Register**.

A State receiving Race to the Top funds must submit to the Department an annual report which must include, in addition to the standard elements, a description of the State's and its LEAs' progress to date on their goals, timelines, and budgets, as well as actual performance compared to the annual targets the State established in its application with respect to each performance measure. Further, a State receiving funds under this program and its participating LEAs are accountable for meeting the goals, timelines, budget, and annual targets established in the application; adhering to an annual fund drawdown schedule that is tied to meeting these goals, timelines, budget, and annual targets; and fulfilling and maintaining all other conditions for the conduct of the project. The Department will monitor a State's and its participating LEAs' progress in meeting the State's goals, timelines, budget, and annual targets and in fulfilling other applicable requirements. In addition, the Department may collect additional data as part of a State's annual reporting requirements.

To support a collaborative process between the State and the Department, the Department may require that applicants who are selected to receive an award enter into a written performance or cooperative agreement with the Department. If the Department determines that a State is not meeting its goals, timelines, budget, or annual targets or is not fulfilling other applicable requirements, the Department will take appropriate action, which could include a collaborative process between the Department and the

State, or enforcement measures with respect to this grant, such as placing the State in high-risk status, putting the State on reimbursement payment status, or delaying or withholding funds.

A State that receives Race to the Top funds must also meet the reporting requirements that apply to all ARRA-funded programs. Specifically, the State must submit reports, within 10 days after the end of each calendar quarter, that contain the information required under section 1512(c) of the ARRA in accordance with any guidance issued by the Office of Management and Budget or the Department (ARRA Division A, Section 1512(c)).

In addition, for each year of the program, the State will submit a report to the Secretary, at such time and in such manner as the Secretary may require, that describes:

- The uses of funds within the State;
- How the State distributed the funds it received;
- The number of jobs that the Governor estimates were saved or created with the funds;
- The State's progress in reducing inequities in the distribution of highly qualified teachers, implementing a State longitudinal data system, and developing and implementing valid and reliable assessments for English language learners and students with disabilities; and
- If applicable, a description of each modernization, renovation, or repair project approved in the State application and funded, including the amounts awarded and project costs (ARRA Division A, Section 14008).

## 4. Evidence and Performance

*Measures:* Appendix A to this notice contains a listing of the evidence and performance measures.

## VII. Agency Contact

*For Further Information Contact:* James Butler, U.S. Department of Education, 400 Maryland Ave., SW., room 3E108, Washington, DC 20202-6400. Telephone: 202-205-3775 or by e-mail: [racetothetop@ed.gov](mailto:racetothetop@ed.gov).

If a TDD is needed, call the Federal Relay Service, toll free, at 1-800-877-8339.

## VIII. Other Information

*Accessible Format:* Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

*Electronic Access to This Document:* You can view this document, as well as all other documents of this Department



published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>. To use PDF you must have Adobe Acrobat Reader, which is available free at this site.

Dated: April 7, 2010.

**Arne Duncan,**

Secretary of Education.

## Appendix A: Evidence and Performance Measures

### A. State Success Factors

(A)(1) *Articulating State's education reform agenda and LEAs' participation in it*

#### Evidence

*Evidence for (A)(1)(ii):*

- An example of the State's standard Participating LEA MOU, and description of variations used, if any.

- The completed summary table indicating which specific portions of the State's plan each LEA is committed to implementing, and relevant summary statistics (see Summary Table for (A)(1)(ii)(b)).

- The completed summary table indicating which LEA leadership signatures have been obtained (see Summary Table for (A)(1)(ii)(c)).

*Evidence for (A)(1)(iii):*

- The completed summary table indicating the numbers and percentages of participating LEAs, schools, K–12 students, and students in poverty (see Summary Table for (A)(1)(iii)).

- Tables and graphs that show the State's goals, overall and by subgroup, requested in the criterion, together with the supporting narrative. In addition, describe what the goals would look like were the State not to receive an award under this program.

*Evidence for (A)(1)(ii) and (A)(1)(iii):*

- The completed detailed table, by LEA, that includes the information requested in the criterion (see Detailed Table for (A)(1)).

#### Performance Measures

- None required.

(A)(2) *Building strong statewide capacity to implement, scale up, and sustain proposed plans.*

#### Evidence

*Evidence for (A)(2)(i)(d):*

- The State's budget, as completed in Section XI of the application. The narrative that accompanies and explains the budget and how it connects to the State's plan, as completed in Section XI of the application.

*Evidence for (A)(2)(ii):*

- A summary in the narrative of the statements or actions and inclusion of key statements or actions in the Appendix.

#### Performance Measures

- None required.

(A)(3) *Demonstrating significant progress in raising achievement and closing gaps*

#### Evidence

*Evidence for (A)(3)(ii):*

NAEP and ESEA results since at least 2003. Include in the Appendix all the data requested in the criterion as a resource for peer reviewers for each year in which a test was given or data was collected. Note that this data will be used for reference only and can be in raw format. In the narrative, provide the analysis of this data and any tables or graphs that best support the narrative.

#### Performance Measures

- None required.

### (B) Standards and Assessments

(B)(1) *Developing and adopting common standards.*

#### Evidence

*Evidence for (B)(1)(i):*

- A copy of the Memorandum of Agreement, executed by the State, showing that it is part of a standards consortium.

- A copy of the final standards or, if the standards are not yet final, a copy of the draft standards and anticipated date for completing the standards.

- Documentation that the standards are or will be internationally benchmarked and that, when well-implemented, will help to ensure that students are prepared for college and careers.

- The number of States participating in the standards consortium and the list of these States.

*Evidence for (B)(1)(ii):*

For Phase 1 applicants:

- A description of the legal process in the State for adopting standards, and the State's plan, current progress, and timeframe for adoption.

For Phase 2 applicants:

- Evidence that the State has adopted the standards. Or, if the State has not yet adopted the standards, a description of the legal process in the State for adopting standards and the State's plan, current progress, and timeframe for adoption.

#### Performance Measures

- None required.

(B)(2) *Developing and implementing common, high-quality assessments.*

#### Evidence

*Evidence for (B)(2):*

- A copy of the Memorandum of Agreement, executed by the State, showing that it is part of a consortium that intends to develop high-quality assessments (as defined in this notice) aligned with the consortium's common set of K–12 standards; or documentation that the State's consortium has applied, or intends to apply, for a grant through the separate Race to the Top Assessment Program (to be described in a subsequent notice); or other evidence of the State's plan to develop and adopt common, high-quality assessments (as defined in this notice).

- The number of States participating in the assessment consortium and the list of these States.

#### Performance Measures

- None required.

(B)(3) *Supporting the transition to enhanced standards and high-quality assessments.*

#### Evidence

- Any supporting evidence the State believes will be helpful to peer reviewers.

#### Performance Measures

- Optional.

### (C) Data Systems to Support Instruction

(C)(1) *Fully implementing a statewide longitudinal data system.*

#### Evidence

- Documentation for each of the America COMPETES Act elements (as defined in this notice) that is included in the State's statewide longitudinal data system.

#### Performance Measures

- None required.

(C)(2) *Accessing and using State data.*

#### Evidence

- Any supporting evidence the State believes will be helpful to peer reviewers.

#### Performance Measures

- Optional.

(C)(3) *Using data to improve instruction.*

#### Evidence

- Any supporting evidence the State believes will be helpful to peer reviewers.

#### Performance Measures

- Optional.

(D) Great Teachers and Leaders.

(D)(1) *Providing high-quality pathways for aspiring teachers and principals.*

*Evidence for (D)(1)(i):*

- A description of the State's applicable laws, statutes, regulations, or other relevant legal documents, including information on the elements of the State's alternative routes (as described in the alternative routes to certification definition in this notice).

*Evidence for (D)(1)(ii):*

- A list of the alternative certification programs operating in the State under the State's alternative routes to certification (as defined in this notice), and for each:

- The elements of the program (as described in the alternative routes to certification definition in this notice).
- The number of teachers and principals that successfully completed each program in the previous academic year.
- The total number of teachers and principals certified statewide in the previous academic year.

#### Performance Measures

- None required.

(D)(2) *Improving teacher and principal effectiveness based on performance.*

#### Evidence

- Any supporting evidence the State believes will be helpful to peer reviewers.

#### Performance Measures

General goals to be provided at time of application, including baseline data and annual targets:

- (D)(2)(i) Percentage of participating LEAs that measure student growth (as defined in this notice).

- (D)(2)(ii) Percentage of participating LEAs with qualifying evaluation systems for teachers.

- (D)(2)(ii) Percentage of participating LEAs with qualifying evaluation systems for principals.

- (D)(2)(iv) Percentage of participating LEAs with qualifying evaluation systems that are used to inform:

- (D)(2)(iv)(a) Developing teachers and principals.

- (D)(2)(iv)(b) Compensating teachers and principals.

- (D)(2)(iv)(b) Promoting teachers and principals.

- (D)(2)(iv)(b) Retaining effective teachers and principals.

- (D)(2)(iv)(c) Granting tenure and/or full certification (where applicable) to teachers and principals.

- (D)(2)(iv)(d) Removing ineffective tenured and untenured teachers and principals.

General data to be provided at time of application, including baseline data:

- Total number of participating LEAs.
- Total number of principals in participating LEAs.

- Total number of teachers in participating LEAs.

Data to be requested of grantees in the future:

- (D)(2)(ii) Number of teachers and principals in participating LEAs with qualifying evaluation systems.

- (D)(2)(iii) Number of teachers and principals in participating LEAs with qualifying evaluation systems who were evaluated as effective or better in the prior academic year.

- (D)(2)(iii) Number of teachers and principals in participating LEAs with qualifying evaluation systems who were evaluated as ineffective in the prior academic year.

- (D)(2)(iv)(b) Number of teachers and principals in participating LEAs with qualifying evaluation systems whose evaluations were used to inform compensation decisions in the prior academic year.

- (D)(2)(iv)(b) Number of teachers and principals in participating LEAs with qualifying evaluation systems who were evaluated as effective or better and were retained in the prior academic year.

- (D)(2)(iv)(c) Number of teachers in participating LEAs with qualifying evaluation systems who were eligible for tenure in the prior academic year.

- (D)(2)(iv)(c) Number of teachers in participating LEAs with qualifying evaluation systems whose evaluations were used to inform tenure decisions in the prior academic year.

- (D)(2)(iv)(d) Number of teachers and principals in participating LEAs who were removed for being ineffective in the prior academic year.

(D)(3) *Ensuring equitable distribution of effective teachers and principals*

#### Evidence

*Evidence for (D)(3)(i):*

- Definitions of high-minority and low-minority schools as defined by the State for the purposes of the State's Teacher Equity Plan.

#### Performance Measures

**Note:** All information below is requested for Participating LEAs.

#### *Performance Measures for (D)(3)(i):*

General goals to be provided at time of application, including baseline data and annual targets:

- Percentage of teachers in schools that are high-poverty, high-minority, or both (as defined in this notice) who are highly effective (as defined in this notice).

- Percentage of teachers in schools that are low-poverty, low-minority, or both (as defined in this notice) who are highly effective (as defined in this notice).

- Percentage of teachers in schools that are high-poverty, high-minority, or both (as defined in this notice) who are ineffective.

- Percentage of teachers in schools that are low-poverty, low-minority, or both (as defined in this notice) who are ineffective.

- Percentage of principals leading schools that are high-poverty, high-minority, or both (as defined in this notice) who are highly effective (as defined in this notice).

- Percentage of principals leading schools that are low-poverty, low-minority, or both (as defined in this notice) who are highly effective (as defined in this notice).

- Percentage of principals leading schools that are high-poverty, high-minority, or both (as defined in this notice) who are ineffective.

- Percentage of principals leading schools that are low-poverty, low-minority, or both (as defined in this notice) who are ineffective.

General data to be provided at time of application, including baseline data:

- Total number of schools that are high-poverty, high-minority, or both (as defined in this notice).

- Total number of schools that are low-poverty, low-minority, or both (as defined in this notice).

- Total number of teachers in schools that are high-poverty, high-minority, or both (as defined in this notice).

- Total number of teachers in schools that are low-poverty, low-minority, or both (as defined in this notice).

- Total number of principals leading schools that are high-poverty, high-minority, or both (as defined in this notice).

- Total number of principals leading schools that are low-poverty, low-minority, or both (as defined in this notice).

Data to be requested of grantees in the future:

- Number of teachers and principals in schools that are high-poverty, high-minority, or both (as defined in this notice) who were evaluated as highly effective (as defined in this notice) in the prior academic year.

- Number of teachers and principals in schools that are high-poverty, high-minority, or both (as defined in this notice) who were evaluated as ineffective in the prior academic year.

- Number of teachers and principals in schools that are low-poverty, low-minority,

or both (as defined in this notice) who were evaluated as highly effective (as defined in this notice) in the prior academic year.

- Number of teachers and principals in schools that are low-poverty, low-minority, or both (as defined in this notice) who were evaluated as ineffective in the prior academic year.

#### *Performance Measures for (D)(3)(ii):*

General goals to be provided at time of application, including baseline data and annual targets:

- Percentage of mathematics teachers who were evaluated as effective or better.

- Percentage of science teachers who were evaluated as effective or better.

- Percentage of special education teachers who were evaluated as effective or better.

- Percentage of teachers in language instruction educational programs who were evaluated as effective or better.

General data to be provided at time of application, including baseline data:

- Total number of mathematics teachers.

- Total number of science teachers.

- Total number of special education teachers.

- Total number of teachers in language instruction educational programs.

Data to be requested of grantees in the future:

- Number of mathematics teachers in participating LEAs who were evaluated as effective or better in the prior academic year.

- Number of science teachers in participating LEAs who were evaluated as effective or better in the prior academic year.

- Number of special education teachers in participating LEAs who were evaluated as effective or better in the prior academic year.

- Number of teachers in language instruction educational programs in participating LEAs who were evaluated as effective or better in the prior academic year.

(D)(4) *Improving the effectiveness of teacher and principal preparation programs.*

#### Evidence

- Any supporting evidence the State believes will be helpful to peer reviewers.

#### Performance Measures

General goals to be provided at time of application, including baseline data and annual targets:

- Percentage of teacher preparation programs in the State for which the public can access data on the achievement and growth (as defined in this notice) of the graduates' students.

- Percentage of principal preparation programs in the State for which the public can access data on the achievement and growth (as defined in this notice) of the graduates' students.

General data to be provided at time of application, including baseline data:

- Total number of teacher credentialing programs in the State.

- Total number of principal credentialing programs in the State.

- Total number of teachers in the State.

- Total number of principals in the State.

Data to be requested of grantees in the future:

- Number of teacher credentialing programs in the State for which the

information (as described in the criterion) is publicly reported.

- Number of teachers prepared by each credentialing program in the State for which the information (as described in the criterion) is publicly reported.

- Number of principal credentialing programs in the State for which the information (as described in the criterion) is publicly reported.

- Number of principals prepared by each credentialing program in the State for which the information (as described in the criterion) is publicly reported.

- Number of teachers in the State whose data are aggregated to produce publicly available reports on the State's credentialing programs.

- Number of principals in the State whose data are aggregated to produce publicly available reports on the State's credentialing programs.

(D)(5) *Providing effective support to teachers and principals.*

#### *Evidence*

- Any supporting evidence the State believes will be helpful to peer reviewers.

#### *Performance Measures*

- Optional.

(E) *Turning Around the Lowest-Achieving Schools.*

(E)(1) *Intervening in the lowest-achieving schools and LEAs Evidence.*

*Evidence for (E)(1):*

- A description of the State's applicable laws, statutes, regulations, or other relevant legal documents.

#### *Performance Measures*

- None required.

(E)(2) *Turning around the lowest-achieving schools.*

#### *Evidence*

- The State's historic performance on school turnaround, as evidenced by the total number of persistently lowest-achieving schools (as defined in this notice) that States

or LEAs attempted to turn around in the last five years, the approach used, and the results and lessons learned to date.

#### *Performance Measures*

- The number of schools for which one of the four school intervention models (described in Appendix C) will be initiated each year.

#### *(F) General*

(F)(1) *Making education funding a priority.*

#### *Evidence*

*Evidence for (F)(1)(i):*

- Financial data to show whether and to what extent expenditures, as a percentage of the total revenues available to the State (as defined in this notice), increased, decreased, or remained the same.

*Evidence for (F)(1)(ii):*

- Any supporting evidence the State believes will be helpful to peer reviewers.

#### *Performance Measures*

- None required.

(F)(2) *Ensuring successful conditions for high-performing charter schools and other innovative schools.*

#### *Evidence*

*Evidence for (F)(2)(i):*

- A description of the State's applicable laws, statutes, regulations, or other relevant legal documents.

- The number of charter schools allowed under State law and the percentage this represents of the total number of schools in the State.

- The number and types of charter schools currently operating in the State.

*Evidence for (F)(2)(ii):*

- A description of the State's approach to charter school accountability and authorization, and a description of the State's applicable laws, statutes, regulations, or other relevant legal documents.

- For each of the last five years:

- The number of charter school applications made in the State.

- The number of charter school applications approved.

- The number of charter school applications denied and reasons for the denials (academic, financial, low enrollment, other).

- The number of charter schools closed (including charter schools that were not reauthorized to operate).

- The reasons for the closures or non-renewals (academic, financial, low enrollment, other).

*Evidence for (F)(2)(iii):*

- A description of the State's applicable statutes, regulations, or other relevant legal documents.

- A description of the State's approach to charter school funding, the amount of funding passed through to charter schools per student, and how those amounts compare with traditional public school per-student funding allocations.

*Evidence for (F)(2)(iv):*

- A description of the State's applicable statutes, regulations, or other relevant legal documents.

- A description of the statewide facilities supports provided to charter schools, if any.

*Evidence for (F)(2)(v):*

- A description of how the State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.

#### *Performance Measures*

- None required.

(F)(3) *Demonstrating other significant reform conditions*

#### *Evidence*

*Evidence for (F)(3):*

- A description of the State's other applicable key education laws, statutes, regulations, or relevant legal documents.

#### *Performance Measures*

- None required.

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**APPENDIX B. SCORING RUBRIC****I. Introduction**

To help ensure inter-reviewer reliability and transparency for State Race to the Top applicants, the U.S. Department of Education has created and is publishing a rubric for scoring State applications. The pages that follow detail the rubric and allocation of point values that reviewers will be using. Race to the Top grants will be awarded on a competitive basis to States in two phases. The rubric will be used by reviewers in each phase to ensure consistency across and within review panels.

The rubric allocates points to each criterion and, in selected cases, to sub-criteria as well. In all, the Race to the Top scoring rubric includes 19 criteria and one competitive priority that collectively add up to 500 points. Several of these criteria account for a large number of points; others account for a comparatively small portion of a State's score.

It is important to emphasize that over half the points that reviewers may award to States are based on States' accomplishments prior to applying—their successes in increasing student achievement, decreasing the achievement gaps, increasing graduation rates, enlisting strong statewide support and commitment to their proposed plans, and creating legal conditions conducive to education reform and innovation. Finally, it bears underscoring that reviewers will be assessing multiple aspects of States' Race to the Top applications. States that fail to earn points or earn a low number of points on one criterion, can still win a Race to the Top award by presenting strong applications and histories of accomplishments on other criteria.

Notwithstanding the guidance being provided to reviewers, reviewers will still be required to make many thoughtful judgments about the quality of States' applications. Beyond judging a State's commitment to the four reform areas specified in the ARRA, reviewers will be assessing, based on the criteria, the comprehensiveness and feasibility of States' applications and plans. Reviewers will be asked to evaluate, for example, if States have set ambitious but achievable annual targets in their applications. Reviewers will need to make informed judgments about States' goals, the activities the State has chosen to undertake and the rationales for such activities, and the timeline and credibility of State plans.

Applicants address the absolute and competitive priorities throughout their applications. The absolute priority must be met in order for an applicant to receive funding. Applications that address the competitive priority comprehensively will earn extra points under that priority. Invitational priorities are extensions to the core reform areas; applicants are invited to address these, but are not granted additional points for doing so.

In this appendix there is information about the point values for each criterion and priority, guidance on scoring, and the rubric that will be provided to reviewers.

## II. Points Overview

The chart below shows the maximum number of points that may be assigned to each criterion.

Selection Criteria	Points	Percent
<b>A. State Success Factors</b>	125	25%
(A)(1) Articulating State's education reform agenda and LEAs' participation in it	65	
(i) Articulating comprehensive, coherent reform agenda	5	
(ii) Securing LEA commitment	45	
(iii) Translating LEA participation into statewide impact	15	
(A)(2) Building strong statewide capacity to implement, scale up, and sustain proposed plans	30	
(i) Ensuring the capacity to implement	20	
(ii) Using broad stakeholder support	10	
(A)(3) Demonstrating significant progress in raising achievement and closing gaps	30	
(i) Making progress in each reform area	5	
(ii) Improving student outcomes	25	
<b>B. Standards and Assessments</b>	70	14%
(B)(1) Developing and adopting common standards	40	
(i) Participating in consortium developing high-quality standards	20	
(ii) Adopting standards	20	
(B)(2) Developing and implementing common, high-quality assessments	10	
(B)(3) Supporting the transition to enhanced standards and high-quality assessments	20	
<b>C. Data Systems to Support Instruction</b>	47	9%
(C)(1) Fully implementing a statewide longitudinal data system	24	
(C)(2) Accessing and using State data	5	
(C)(3) Using data to improve instruction	18	
<b>D. Great Teachers and Leaders</b>	138	28%
Eligibility Requirement (b)	eligibility	
(D)(1) Providing high-quality pathways for aspiring teachers and principals	21	
(D)(2) Improving teacher and principal effectiveness based on performance	58	
(i) Measuring student growth	5	
(ii) Developing evaluation systems	15	
(iii) Conducting annual evaluations	10	
(iv) Using evaluations to inform key decisions	28	
(D)(3) Ensuring equitable distribution of effective teachers and principals	25	
(i) Ensuring equitable distribution in high-poverty or high-minority schools	15	
(ii) Ensuring equitable distribution in hard-to-staff subjects and specialty areas	10	
(D)(4) Improving the effectiveness of teacher and principal preparation programs	14	
(D)(5) Providing effective support to teachers and principals	20	
<b>E. Turning Around the Lowest-Achieving Schools</b>	50	10%
(E)(1) Intervening in the lowest-achieving schools and LEAs	10	
(E)(2) Turning around the lowest-achieving schools	40	
(i) Identifying the persistently lowest-achieving schools	5	
(ii) Turning around the persistently lowest-achieving schools	35	
<b>F. General</b>	55	11%
Eligibility Requirement (a)	eligibility	
(F)(1) Making education funding a priority	10	
(F)(2) Ensuring successful conditions for high-performing charter schools and other innovative s	40	
(F)(3) Demonstrating other significant reform conditions	5	
Competitive Preference Priority 2: Emphasis on STEM	15	3%
<b>TOTAL</b>	<b>500</b>	<b>100%</b>
Subtotal: Accomplishments	260	52%
Subtotal: Plans	240	48%

### III. About Scoring

About State Reform Conditions Criteria: The goal for State Reform Conditions Criteria is to ensure that, wherever possible, reviewers are provided with criterion-specific guidance that is clear and specific, making the decisions as “objective” as possible. (See application requirement (d) for the guidance provided to States concerning responding to State Reform Conditions Criteria in their applications.)

About Reform Plan Criteria: For Reform Plan Criteria, reviewers will be given general guidance on how to evaluate the information that each State submits; this guidance will be consistent with application requirement (e). Reviewers will allot points based on the quality of the State’s plan and, where specified in the text of the criterion, whether the State has set ambitious yet achievable annual targets for that plan. In making these judgments, reviewers will consider the extent to which the State has:

- *A high-quality plan.* In determining the quality of a State’s plan for a given Reform Plan Criterion, reviewers will evaluate the key goals, the activities to be undertaken and rationale for the activities, the timeline, the parties responsible for implementing the activities, and the credibility of the plan (as judged, in part, by the information submitted as supporting evidence). States are required to submit this information for each Reform Plan Criterion that the State addresses. States may also submit additional information that they believe will be helpful to peer reviewers.
- *Ambitious yet achievable annual targets* (only for those criteria that specify this). In determining whether a State has ambitious yet achievable annual targets for a given Reform Plan Criterion, reviewers will examine the State’s targets in the context of the State’s plan and the evidence submitted (if any) in support of the plan. There is no specific target that reviewers will be looking for here; nor will higher targets necessarily be rewarded above lower ones. Rather, reviewers will reward States for developing targets that – in light of the State’s plan – are “ambitious yet achievable.”

Note that the evidence that States submit may be relevant both to judging whether the State has a high-quality plan and whether its annual targets are ambitious yet achievable.

About Assigning Points: For each criterion, reviewers will assign points to an application. In general, the Department has specified total point values at the criterion level and in some instances, at the sub-criterion level. In the cases where the point totals have not been allocated to sub-criteria, each sub-criterion is weighted equally.

The reviewers will use the general ranges below as a guide when awarding points.

Maximum Point Value	Quality of Applicant’s Response		
	Low	Medium	High
45	0 – 12	13 – 33	34 – 45
40	0 – 10	11 – 29	30 – 40
35	0 – 9	10 – 25	26 – 35
30	0 – 8	9 – 21	22 – 30
28	0 – 8	9 – 20	21 – 28

Maximum Point Value	Quality of Applicant's Response		
	Low	Medium	High
25	0 – 7	8 – 18	19 – 25
21	0 – 5	6 – 15	16 – 21
20	0 – 5	6 – 14	15 – 20
15	0 – 4	5 – 10	11 – 15
14	0 – 4	5 – 9	10 – 14
10	0 – 2	3 – 7	8 – 10
8	0 – 2	3 – 5	6 – 8
7	0 – 2	3 – 4	5 – 7
6	0 – 1	2 – 3	4 – 6
5	0 – 1	2 – 3	4 – 5

About Priorities: There are three types of priorities in the Race to the Top competition.

- The absolute priority cuts across the entire application and should not be addressed separately. It will be assessed, after the proposal has been fully reviewed and evaluated, to ensure that the application has met the priority. If an application has not met the priority, it will be eliminated from the competition.
- The competitive priority also cuts across the entire application. It is worth 15 points. Applicants will earn all or none of it, making it truly a competitive preference. In those cases where there is a disparity in the reviewers' determinations on the priority, the Department will award the competitive priority points only if a majority of the reviewers on a panel determine that an application should receive the priority points.
- The invitational priorities are addressed in their own separate sections. While applicants are invited to write to the invitational priorities, these will not earn points.

In the Event of a Tie: If two or more applications have the same score and there is not sufficient funding to support all of the tied applicants, the applicants' scores on criterion (A)(1)(ii), Securing LEA Commitment, will be used to break the tie.

#### IV. Reviewer Guidance for Criteria

##### A. State Success Factors

*General Reviewer Guidance for (A)(1): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any).*

*Reviewer Guidance Specific to (A)(1)(ii):*

- *The model Memorandum of Understanding (MOU), provided in Appendix D to this notice, is an example of a strong MOU.*

(A)(1) (maximum total points: 65) Articulating State's education reform agenda and LEAs' participation in it: The extent to which—



(i) **(maximum subpoints: 5)** The State has set forth a comprehensive and coherent reform agenda that clearly articulates its goals for implementing reforms in the four education areas described in the ARRA and improving student outcomes statewide, establishes a clear and credible path to achieving these goals, and is consistent with the specific reform plans that the State has proposed throughout its application;

(ii) **(maximum subpoints: 45)** The participating LEAs (as defined in this notice) are strongly committed to the State's plans and to effective implementation of reform in the four education areas, as evidenced by Memoranda of Understanding (MOUs) (as set forth in Appendix D) or other binding agreements between the State and its participating LEAs (as defined in this notice) that include—

(a) Terms and conditions that reflect strong commitment by the participating LEAs (as defined in this notice) to the State's plans;

(b) Scope-of-work descriptions that require participating LEAs (as defined in this notice) to implement all or significant portions of the State's Race to the Top plans; and

(c) Signatures from as many as possible of the LEA superintendent (or equivalent), the president of the local school board (or equivalent, if applicable), and the local teachers' union leader (if applicable) (one signature of which must be from an authorized LEA representative) demonstrating the extent of leadership support within participating LEAs (as defined in this notice); and

(iii) **(maximum subpoints: 15)** The LEAs that are participating in the State's Race to the Top plans (including considerations of the numbers and percentages of participating LEAs, schools, K-12 students, and students in poverty) will translate into broad statewide impact, allowing the State to reach its ambitious yet achievable goals, overall and by student subgroup, for—

(a) Increasing student achievement in (at a minimum) reading/language arts and mathematics, as reported by the NAEP and the assessments required under the ESEA;

(b) Decreasing achievement gaps between subgroups in reading/language arts and mathematics, as reported by the NAEP and the assessments required under the ESEA;

(c) Increasing high school graduation rates (as defined in this notice); and

(d) Increasing college enrollment (as defined in this notice) and increasing the number of students who complete at least a year's worth of college credit that is applicable to a degree within two years of enrollment in an institution of higher education.

*General Reviewer Guidance for (A)(2): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (e).*

**(A)(2) (maximum total points: 30)** Building strong statewide capacity to implement, scale up, and sustain proposed plans: The extent to which the State has a high-quality overall plan to—

(i) **(maximum subpoints: 20)** Ensure that it has the capacity required to implement its proposed plans by—

(a) Providing strong leadership and dedicated teams to implement the statewide education reform plans the State has proposed;

(b) Supporting participating LEAs (as defined in this notice) in successfully implementing the education reform plans the State has proposed, through such activities as identifying promising practices, evaluating these practices' effectiveness, ceasing ineffective practices, widely disseminating and replicating the effective practices statewide, holding participating LEAs (as defined in this notice) accountable for progress and performance, and intervening where necessary;

(c) Providing effective and efficient operations and processes for implementing its Race to the Top grant in such areas as grant administration and oversight, budget reporting and monitoring, performance measure tracking and reporting, and fund disbursement;

(d) Using the funds for this grant, as described in the State's budget and accompanying budget narrative, to accomplish the State's plans and meet its targets, including where feasible, by coordinating, reallocating, or repurposing education funds from other Federal, State, and local sources so that they align with the State's Race to the Top goals;

(e) Using the fiscal, political, and human capital resources of the State to continue, after the period of funding has ended, those reforms funded under the grant for which there is evidence of success; and

(ii) **(maximum subpoints: 10)** Use support from a broad group of stakeholders to better implement its plans, as evidenced by the strength of statements or actions of support from—

(a) The State's teachers and principals, which include the State's teachers' unions or statewide teacher associations; and

(b) Other critical stakeholders, such as the State's legislative leadership; charter school authorizers and State charter school membership associations (if applicable); other State and local leaders (e.g., business, community, civil rights, and education association leaders); Tribal schools; parent, student, and community organizations (e.g., parent-teacher associations, nonprofit organizations, local education foundations, and community-based organizations); and institutions of higher education.

*General Reviewer Guidance for (A)(3): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks, and to the evidence requested in the application and presented by the applicant (if any).*

**(A)(3) (maximum total points: 30)** Demonstrating significant progress in raising achievement and closing gaps: The extent to which the State has demonstrated its ability to—

(i) **(maximum subpoints: 5)** Make progress over the past several years in each of the four education reform areas, and used its ARRA and other Federal and State funding to pursue such reforms;

(ii) **(maximum subpoints: 25)** Improve student outcomes overall and by student subgroup since at least 2003, and explain the connections between the data and the actions that have contributed to—

(a) Increasing student achievement in reading/language arts and mathematics, both on the NAEP and on the assessments required under the ESEA;

(b) Decreasing achievement gaps between subgroups in reading/language arts and mathematics, both on the NAEP and on the assessments required under the ESEA; and

(c) Increasing high school graduation rates.

## **B. Standards and Assessments**

### State Reform Conditions Criteria

*General Reviewer Guidance for (B)(1): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks and to the evidence requested in the application and presented by the applicant (if any).*

*Reviewer Guidance Specific to (B)(1)(i)(b)– Significant Number of States:*

- “High” points for a significant number of States are earned if the consortium includes a majority of the States in the country;
- “Medium” or “low” points are earned if the consortium includes one-half of the States in the country or less.

Reviewer Guidance Specific to (B)(1)(ii):

- “High” points are earned for: Phase 1 applicants’ commitment to and progress toward adoption by August 2, 2010; and Phase 2 applicants’ adoption by August 2, 2010.
- No “Medium” points are assigned for this criterion.
- “Low” points are earned for a high-quality plan to adopt by a later specified date in 2010.
- No points are earned for a plan that is not high-quality or for a plan to adopt later than 2010.

(B)(1) **(maximum total points: 40)** Developing and adopting common standards: The extent to which the State has demonstrated its commitment to adopting a common set of high-quality standards, evidenced by (as set forth in Appendix B)—

(i) **(maximum subpoints: 20)** The State’s participation in a consortium of States that—

(a) Is working toward jointly developing and adopting a common set of K-12 standards (as defined in this notice) that are supported by evidence that they are internationally benchmarked and build toward college and career readiness by the time of high school graduation; and

(b) Includes a significant number of States; and

(ii) **(maximum subpoints: 20)** (a) For Phase 1 applications, the State’s high-quality plan demonstrating its commitment to and progress toward adopting a common set of K-12 standards (as defined in this notice) by August 2, 2010, or, at a minimum, by a later date in 2010 specified by the State, and to implementing the standards thereafter in a well-planned way; or

(b) For Phase 2 applications, the State’s adoption of a common set of K-12 standards (as defined in this notice) by August 2, 2010, or, at a minimum, by a later date in 2010 specified by the State in a high-quality plan toward which the State has made significant progress, and its commitment to implementing the standards thereafter in a well-planned way.<sup>7</sup>

General Reviewer Guidance for (B)(2): In judging the quality of the applicant’s response to this criterion, reviewers should refer to what the criterion asks and to the evidence requested in the application and presented by the applicant (if any).

Reviewer Guidance Specific to (B)(2)(ii)— Significant Number of States:

- “High” points for a significant number of States are earned if the consortium includes a majority of the States in the country.
- “Medium” or “low” points are earned if the consortium includes one-half of the States in the country or less.

(B)(2) **(maximum total points: 10)** Developing and implementing common, high-quality assessments: The extent to which the State has demonstrated its commitment to improving the quality of its assessments, evidenced by (as set forth in Appendix B) the State’s participation in a consortium of States that—

(i) Is working toward jointly developing and implementing common, high-quality assessments (as defined in this notice) aligned with the consortium’s common set of K-12 standards (as defined in this notice); and

<sup>7</sup> Phase 2 applicants addressing selection criterion (B)(1)(ii) may amend their June 1, 2010 application submission through August 2, 2010 by submitting evidence of adopting common standards after June 1, 2010.

- (ii) Includes a significant number of States.

Reform Plan Criteria

*General Reviewer Guidance for (B)(3): In judging the quality of the applicant's plan and annual targets (if any) for this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (e).*

**(B)(3) (maximum total points: 20)** Supporting the transition to enhanced standards and high-quality assessments: The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan for supporting a statewide transition to and implementation of internationally benchmarked K-12 standards that build toward college and career readiness by the time of high school graduation, and high-quality assessments (as defined in this notice) tied to these standards. State or LEA activities might, for example, include: developing a rollout plan for the standards together with all of their supporting components; in cooperation with the State's institutions of higher education, aligning high school exit criteria and college entrance requirements with the new standards and assessments; developing or acquiring, disseminating, and implementing high-quality instructional materials and assessments (including, for example, formative and interim assessments (both as defined in this notice)); developing or acquiring and delivering high-quality professional development to support the transition to new standards and assessments; and engaging in other strategies that translate the standards and information from assessments into classroom practice for all students, including high-need students (as defined in this notice).

**C. Data Systems to Support Instruction**

State Reform Conditions Criteria

*General Reviewer Guidance for (C)(1): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks and to the evidence requested in the application and presented by the applicant (if any).*

Reviewer Guidance Specific to (C)(1):

- Applicants earn two (2) points for every element the State has, out of 12 elements possible.

**(C)(1) (maximum total points: 24)** Fully implementing a statewide longitudinal data system: The extent to which the State has a statewide longitudinal data system that includes all of the America COMPETES Act elements (as defined in this notice).

Reform Plan Criteria

*General Reviewer Guidance for (C)(2): In judging the quality of the applicant's plan and annual targets (if any) for this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (d).*

(C)(2) **(maximum total points: 5)** Accessing and using State data: The extent to which the State has a high-quality plan to ensure that data from the State's statewide longitudinal data system are accessible to, and used to inform and engage, as appropriate, key stakeholders (e.g., parents, students, teachers, principals, LEA leaders, community members, unions, researchers, and policymakers); and that the data support decision-makers in the continuous improvement of efforts in such areas as policy, instruction, operations, management, resource allocation, and overall effectiveness.<sup>8</sup>

*General Reviewer Guidance for (C)(3): In judging the quality of the applicant's plan and annual targets (if any) for this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (e).*

(C)(3) **(maximum total points: 18)** Using data to improve instruction: The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan to—

(i) Increase the acquisition, adoption, and use of local instructional improvement systems (as defined in this notice) that provide teachers, principals, and administrators with the information and resources they need to inform and improve their instructional practices, decision-making, and overall effectiveness;

(ii) Support participating LEAs (as defined in this notice) and schools that are using instructional improvement systems (as defined in this notice) in providing effective professional development to teachers, principals, and administrators on how to use these systems and the resulting data to support continuous instructional improvement; and

(iii) Make the data from instructional improvement systems (as defined in this notice), together with statewide longitudinal data system data, available and accessible to researchers so that they have detailed information with which to evaluate the effectiveness of instructional materials, strategies, and approaches for educating different types of students (e.g., students with disabilities, English language learners, students whose achievement is well below or above grade level).

#### **D. Great Teachers and Leaders**

##### State Reform Conditions Criteria

*General Reviewer Guidance for (D)(1): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks and to the evidence requested in the application and presented by the applicant (if any).*

##### Reviewer Guidance Specific to (D)(1):

- The criterion must be judged for both teachers and principals.

##### Reviewer Guidance Specific to (D)(1)(i):

- "High" points are earned by States that have alternative routes that (a) permit providers who operate independently of institutions of higher education (IHEs), and (b) include at least 4 of the 5 elements listed in the definition of alternative routes to certification (as defined in this notice).

<sup>8</sup> Successful applicants that receive Race to the Top grant awards will need to comply with the Family Educational Rights and Privacy Act (FERPA), including 34 CFR Part 99, as well as State and local requirements regarding privacy.

- “Medium” points are earned by States that have alternative routes that (a) permit providers who operate independently of IHEs, and (b) include at least 2 of the 5 elements listed in the definition of alternative routes to certification (as defined in this notice).
- “Low” points are earned by States that have alternative routes that (a) do not permit providers who operate independently of IHEs, OR (b) include only 1 of the 5 elements listed in the definition of alternative routes to certification (as defined in this notice).

**(D)(1) (maximum total points: 21) Providing high-quality pathways for aspiring teachers and principals:** The extent to which the State has—

- (i) Legal, statutory, or regulatory provisions that allow alternative routes to certification (as defined in this notice) for teachers and principals, particularly routes that allow for providers in addition to institutions of higher education;
- (ii) Alternative routes to certification (as defined in this notice) that are in use; and
- (iii) A process for monitoring, evaluating, and identifying areas of teacher and principal shortage and for preparing teachers and principals to fill these areas of shortage.

Reform Plan Criteria

General Reviewer Guidance for (D)(2): In judging the quality of the applicant’s response to this criterion and annual targets, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (e).

Reviewer Guidance Specific to (D)(2):

- The criterion must be judged for both teachers and principals.

**(D)(2) (maximum total points: 58) Improving teacher and principal effectiveness based on performance:** The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan and ambitious yet achievable annual targets to ensure that participating LEAs (as defined in this notice)—

- (i) **(maximum subpoints: 5)** Establish clear approaches to measuring student growth (as defined in this notice) and measure it for each individual student;
- (ii) **(maximum subpoints: 15)** Design and implement rigorous, transparent, and fair evaluation systems for teachers and principals that (a) differentiate effectiveness using multiple rating categories that take into account data on student growth (as defined in this notice) as a significant factor, and (b) are designed and developed with teacher and principal involvement;
- (iii) **(maximum subpoints: 10)** Conduct annual evaluations of teachers and principals that include timely and constructive feedback; as part of such evaluations, provide teachers and principals with data on student growth for their students, classes, and schools; and
- (iv) **(maximum subpoints: 28)** Use these evaluations, at a minimum, to inform decisions regarding—
  - (a) Developing teachers and principals, including by providing relevant coaching, induction support, and/or professional development;
  - (b) Compensating, promoting, and retaining teachers and principals, including by providing opportunities for highly effective teachers and principals (both as defined in this notice) to obtain additional compensation and be given additional responsibilities;
  - (c) Whether to grant tenure and/or full certification (where applicable) to teachers and principals using rigorous standards and streamlined, transparent, and fair procedures; and

(d) Removing ineffective tenured and untenured teachers and principals after they have had ample opportunities to improve, and ensuring that such decisions are made using rigorous standards and streamlined, transparent, and fair procedures.

*General Reviewer Guidance for (D)(3): In judging the quality of the applicant's plan and annual targets for this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (e).*

**(D)(3) (maximum total points: 25) Ensuring equitable distribution of effective teachers and principals:** The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan and ambitious yet achievable annual targets to—

(i) **(maximum subpoints: 15)** Ensure the equitable distribution of teachers and principals by developing a plan, informed by reviews of prior actions and data, to ensure that students in high-poverty and/or high-minority schools (both as defined in this notice) have equitable access to highly effective teachers and principals (both as defined in this notice) and are not served by ineffective teachers and principals at higher rates than other students; and

(ii) **(maximum subpoints: 10)** Increase the number and percentage of effective teachers (as defined in this notice) teaching hard-to-staff subjects and specialty areas including mathematics, science, and special education; teaching in language instruction educational programs (as defined under Title III of the ESEA); and teaching in other areas as identified by the State or LEA.

Plans for (i) and (ii) may include, but are not limited to, the implementation of incentives and strategies in such areas as recruitment, compensation, teaching and learning environments, professional development, and human resources practices and processes.

*General Reviewer Guidance for (D)(4): In judging the quality of the applicant's plan and annual targets for this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (e).*

*Reviewer Guidance Specific to (D)(4):*

- The criterion must be judged for both teachers and principals.

**(D)(4) (maximum total points: 14) Improving the effectiveness of teacher and principal preparation programs:** The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to—

(i) Link student achievement and student growth (both as defined in this notice) data to the students' teachers and principals, to link this information to the in-State programs where those teachers and principals were prepared for credentialing, and to publicly report the data for each credentialing program in the State; and

(ii) Expand preparation and credentialing options and programs that are successful at producing effective teachers and principals (both as defined in this notice).

*General Reviewer Guidance for (D)(5): In judging the quality of the applicant's plan and annual targets (if any) for this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (e).*



(D)(5) **(maximum total points: 20)** Providing effective support to teachers and principals: The extent to which the State, in collaboration with its participating LEAs (as defined in this notice), has a high-quality plan for its participating LEAs (as defined in this notice) to—

(i) Provide effective, data-informed professional development, coaching, induction, and common planning and collaboration time to teachers and principals that are, where appropriate, ongoing and job-embedded. Such support might focus on, for example, gathering, analyzing, and using data; designing instructional strategies for improvement; differentiating instruction; creating school environments supportive of data-informed decisions; designing instruction to meet the specific needs of high-need students (as defined in this notice); and aligning systems and removing barriers to effective implementation of practices designed to improve student learning outcomes; and

(ii) Measure, evaluate, and continuously improve the effectiveness of those supports in order to improve student achievement (as defined in this notice).

## **E. Turning Around the Lowest-Achieving Schools**

### State Reform Conditions Criteria

General Reviewer Guidance for (E)(1): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks and to the evidence requested in the application and presented by the applicant (if any).

#### Reviewer Guidance Specific to (E)(1):

- 10 points are earned by States that can intervene directly in both schools and LEAs.
- 5 points are earned by States that can intervene directly in either schools or LEAs, but not both.
- 0 points are earned by States that cannot intervene in either schools or LEAs.

(E)(1) **(maximum total points: 10)** Intervening in the lowest-achieving schools and LEAs: The extent to which the State has the legal, statutory, or regulatory authority to intervene directly in the State's persistently lowest-achieving schools (as defined in this notice) and in LEAs that are in improvement or corrective action status.

### Reform Plan Criteria

General Reviewer Guidance for (E)(2): In judging the quality of the applicant's plan and annual targets for this criterion, reviewers should refer to what the criterion asks, to the evidence requested in the application and presented by the applicant (if any), and to the elements of a high-quality plan as set forth in application requirement (e).

(E)(2) **(maximum total points: 40)** Turning around the lowest-achieving schools: The extent to which the State has a high-quality plan and ambitious yet achievable annual targets to—

(i) **(maximum subpoints: 5)** Identify the persistently lowest-achieving schools (as defined in this notice) and, at its discretion, any non-Title I eligible secondary schools that would be considered persistently lowest-achieving schools (as defined in this notice) if they were eligible to receive Title I funds; and

(ii) **(maximum subpoints: 35)** Support its LEAs in turning around these schools by implementing one of the four school intervention models (as described in Appendix C): turnaround model, restart model, school closure, or transformation model (provided that an LEA with more

than nine persistently lowest-achieving schools may not use the transformation model for more than 50 percent of its schools).

## F. General

### State Reform Conditions Criteria

General Reviewer Guidance for (F)(1): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks and to the evidence requested in the application and presented by the applicant (if any).

#### Reviewer Guidance Specific to (F)(1)(i):

- "High" points are earned if the percentage of the total revenues available to the State that were used to support elementary, secondary, and public higher education increased from FY 2008 to FY 2009.
- "Medium" points are earned if the percentage of the total revenues available to the State that were used to support elementary, secondary, and public higher education were substantially unchanged from FY 2008 to FY 2009.
- "Low" points are earned if the percentage of the total revenues available to the State that were used to support elementary, secondary, and public higher education decreased from FY 2008 to FY 2009.

(F)(1) (maximum total points: 10) Making education funding a priority: The extent to which—

(i) The percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2009 was greater than or equal to the percentage of the total revenues available to the State (as defined in this notice) that were used to support elementary, secondary, and public higher education for FY 2008; and

(ii) The State's policies lead to equitable funding (a) between high-need LEAs (as defined in this notice) and other LEAs, and (b) within LEAs, between high-poverty schools (as defined in this notice) and other schools.

General Reviewer Guidance for (F)(2): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks and to the evidence requested in the application and presented by the applicant (if any).

#### Reviewer Guidance Specific to (F)(2)(i):

- "High" points are earned if the State either has no cap on the number of charter schools, or it has a "high" cap (defined as a cap such that, if it were filled,  $\geq 10\%$  of the total schools in the State would be charter schools); and the State does not have restrictions, such as those referenced in the "note to reviewers" below, that would be considered even mildly inhibiting.
- "Medium" points are earned if the State has a "medium" cap on the number of charter schools (defined as a cap such that, if it were filled,  $\geq 5\%$  and  $< 10\%$  of the total schools in the State would be charter schools); or the charter school law has sufficient flexibility to allow for an increase in the number of charter schools as if it were a medium or higher cap (e.g. by allowing for the creation of multiple campuses under the same charter); and the State does not have restrictions, such as those referenced in the "note to reviewers" below, that would be considered moderately or severely inhibiting.
- "Low" points are earned if the State has a "low" cap on the number of charter schools (defined as a cap such that, if it were filled,  $< 5\%$  of the total schools in the State would be charter schools) OR if the State has restrictions, such as those referenced in the "note to reviewers" below, that would be considered severely inhibiting.
- No points are earned if the State has no charter school law.

- *Note to reviewers: Charter school laws are so complex that it is hard to write rules to capture each possible obstacle to charter school growth; therefore, this rubric is meant to guide reviewers, not to bind them. For example, if a State limits the number of charter schools by limiting the share of statewide or district-level funding that can go to charter schools, rather than by explicitly limiting the number of charter schools, reviewers should convert the funding restriction into an approximately equivalent limit on the number of schools and fit that into the guidelines here. As reviewers assess the inhibitions on charter schools, they should look for restrictions such as: disallowing certain types of charter schools (e.g., startups or conversions); restricting charter schools to operate in certain geographic areas; and limiting the number, percent, or demographics of students that may enroll in charter schools. Some States have "smart caps" designed to restrict growth to high-performing charter schools; this is not a problem unless it effectively restricts any new (i.e., unproven) charter schools from starting.*

Reviewer Guidance Specific to (F)(2)(iii):

- "High" points are earned if the per-pupil funding to charter school students is  $\geq 90\%$  of that which is provided to traditional public school students.
- "Medium" points are earned if the per-pupil funding to charter school students is 80-89% of that which is provided to traditional public school students.
- "Low" points are earned if the per-pupil funding to charter school students is  $\leq 79\%$  of that which is provided to traditional public school students.
- No points are earned if the State has no charter school law.

**(F)(2) (maximum total points: 40) Ensuring successful conditions for high-performing charter schools and other innovative schools:** The extent to which—

(i) The State has a charter school law that does not prohibit or effectively inhibit increasing the number of high-performing charter schools (as defined in this notice) in the State, measured (as set forth in Appendix B) by the percentage of total schools in the State that are allowed to be charter schools or otherwise restrict student enrollment in charter schools.

(ii) The State has laws, statutes, regulations, or guidelines regarding how charter school authorizers approve, monitor, hold accountable, reauthorize, and close charter schools; in particular, whether authorizers require that student achievement (as defined in this notice) be one significant factor, among others, in authorization or renewal; encourage charter schools that serve student populations that are similar to local district student populations, especially relative to high-need students (as defined in this notice); and have closed or not renewed ineffective charter schools.

(iii) The State's charter schools receive (as set forth in Appendix B) equitable funding compared to traditional public schools, and a commensurate share of local, State, and Federal revenues.

(iv) The State provides charter schools with funding for facilities (for leasing facilities, purchasing facilities, or making tenant improvements), assistance with facilities acquisition, access to public facilities, the ability to share in bonds and mill levies, or other supports; and the extent to which the State does not impose any facility-related requirements on charter schools that are stricter than those applied to traditional public schools.

(v) The State enables LEAs to operate innovative, autonomous public schools (as defined in this notice) other than charter schools.

*General Reviewer Guidance for (F)(3): In judging the quality of the applicant's response to this criterion, reviewers should refer to what the criterion asks and to the evidence requested in the application and presented by the applicant (if any).*

**(F)(3) (maximum total points: 5) Demonstrating other significant reform conditions:** The extent to which the State, in addition to information provided under other State Reform Conditions Criteria, has created, through law, regulation, or policy, other conditions favorable to education reform or innovation that have increased student achievement or graduation rates, narrowed achievement gaps, or resulted in other important outcomes.

## V. Reviewer Guidance for Priorities

***Absolute Priority Guidance:** The application will be judged to ensure that it has met the absolute priority set forth below. The absolute priority cuts across the entire application and should not be addressed separately. It is assessed, after the proposal has been fully reviewed and evaluated, to ensure that the application has met the priority. If an application has not met the priority, it will be eliminated from the competition.*

### Priority 1: Absolute Priority – Comprehensive Approach to Education Reform

To meet this priority, the State's application must comprehensively and coherently address all of the four education reform areas specified in the ARRA as well as the State Success Factors Criteria in order to demonstrate that the State and its participating LEAs are taking a systemic approach to education reform. The State must demonstrate in its application sufficient LEA participation and commitment to successfully implement and achieve the goals in its plans; and it must describe how the State, in collaboration with its participating LEAs, will use Race to the Top and other funds to increase student achievement, decrease the achievement gaps across student subgroups, and increase the rates at which students graduate from high school prepared for college and careers.

***Competitive Priority Guidance:** The application will be judged to determine whether it has met the competitive preference priority set forth below. The competitive preference priority will be evaluated in the context of the State's entire application. Therefore, a State that is responding to this priority should address it throughout the application, as appropriate, and provide a summary of its approach to addressing the priority. The reviewers will assess the priority as part of their review of a State's application and determine whether it has been met.*

### Priority 2: Competitive Preference Priority – Emphasis on Science, Technology, Engineering, and Mathematics (STEM). (competitive preference points: 15, all or nothing)

To meet this priority, the State's application must have a high-quality plan to address the need to (i) offer a rigorous course of study in mathematics, the sciences, technology, and engineering; (ii) cooperate with industry experts, museums, universities, research centers, or other STEM-capable community partners to prepare and assist teachers in integrating STEM content across grades and disciplines, in promoting effective and relevant instruction, and in offering applied learning opportunities for students; and (iii) prepare more students for advanced study and careers in the sciences, technology, engineering, and mathematics, including by addressing the needs of underrepresented groups and of women and girls in the areas of science, technology, engineering, and mathematics.

**Invitational Priority Guidance** No points are awarded for invitational priorities.

**Priority 3: Invitational Priority – Innovations for Improving Early Learning Outcomes.**

The Secretary is particularly interested in applications that include practices, strategies, or programs to improve educational outcomes for high-need students who are young children (pre-kindergarten through third grade) by enhancing the quality of preschool programs. Of particular interest are proposals that support practices that (i) improve school readiness (including social, emotional, and cognitive); and (ii) improve the transition between preschool and kindergarten.

**Invitational Priority Guidance** No points are awarded for invitational priorities.

**Priority 4: Invitational Priority – Expansion and Adaptation of Statewide Longitudinal Data Systems.**

The Secretary is particularly interested in applications in which the State plans to expand statewide longitudinal data systems to include or integrate data from special education programs, English language learner programs,<sup>9</sup> early childhood programs, at-risk and dropout prevention programs, and school climate and culture programs, as well as information on student mobility, human resources (i.e., information on teachers, principals, and other staff), school finance, student health, postsecondary education, and other relevant areas, with the purpose of connecting and coordinating all parts of the system to allow important questions related to policy, practice, or overall effectiveness to be asked, answered, and incorporated into effective continuous improvement practices.

The Secretary is also particularly interested in applications in which States propose working together to adapt one State's statewide longitudinal data system so that it may be used, in whole or in part, by one or more other States, rather than having each State build or continue building such systems independently.

**Invitational Priority Guidance** No points are awarded for invitational priorities.

**Priority 5: Invitational Priority – P-20 Coordination, Vertical and Horizontal Alignment.**

The Secretary is particularly interested in applications in which the State plans to address how early childhood programs, K-12 schools, postsecondary institutions, workforce development organizations, and other State agencies and community partners (e.g., child welfare, juvenile justice, and criminal justice agencies) will coordinate to improve all parts of the education system and create a more seamless preschool-through-graduate school (P-20) route for students. Vertical alignment across P-20 is particularly critical at each point where a transition occurs (e.g., between early childhood and K-12, or between K-12 and postsecondary/ careers) to ensure that students exiting one level are prepared for success, without remediation, in the next. Horizontal alignment, that is, coordination of services across schools, State agencies, and community partners, is also important in ensuring that high-need students (as defined in this notice) have access to the broad array of opportunities and services they need and that are beyond the capacity of a school itself to provide.

**Invitational Priority Guidance** No points are awarded for invitational priorities.

<sup>9</sup> The term English language learner, throughout this notice, is meant to include students who are limited English proficient, as defined in section 9101 of the ESEA.

### Priority 6: Invitational Priority – School-Level Conditions for Reform, Innovation, and Learning.

The Secretary is particularly interested in applications in which the State's participating LEAs (as defined in this notice) seek to create the conditions for reform and innovation as well as the conditions for learning by providing schools with flexibility and autonomy in such areas as—

- (i) Selecting staff;
- (ii) Implementing new structures and formats for the school day or year that result in increased learning time (as defined in this notice);
- (iii) Controlling the school's budget;
- (iv) Awarding credit to students based on student performance instead of instructional time;
- (v) Providing comprehensive services to high-need students (as defined in this notice) (e.g., by mentors and other caring adults; through local partnerships with community-based organizations, nonprofit organizations, and other providers);
- (vi) Creating school climates and cultures that remove obstacles to, and actively support, student engagement and achievement; and
- (vii) Implementing strategies to effectively engage families and communities in supporting the academic success of their students.

### Appendix C. School Intervention Models

There are four school intervention models referred to in Selection Criterion (E)(2): turnaround model, restart model, school closure, or transformation model. Each is described below.

- (a) *Turnaround model.* (1) A turnaround model is one in which an LEA must—
  - (i) Replace the principal and grant the principal sufficient operational flexibility (including in staffing, calendars/time, and budgeting) to implement fully a comprehensive approach in order to substantially improve student achievement outcomes and increase high school graduation rates;
  - (ii) Using locally adopted competencies to measure the effectiveness of staff who can work within the turnaround environment to meet the needs of students;
    - (A) Screen all existing staff and rehire no more than 50 percent; and
    - (B) Select new staff;
  - (iii) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in the turnaround school;
  - (iv) Provide staff with ongoing, high-quality, job-embedded professional development that is aligned with the school's comprehensive instructional program and designed with school staff to ensure that they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies;
  - (v) Adopt a new governance structure, which may include, but is not limited to, requiring the school to report to a new "turnaround office" in the LEA or SEA, hire a "turnaround leader" who reports directly to the Superintendent or Chief Academic Officer, or enter into a multi-year contract with the LEA or SEA to obtain added flexibility in exchange for greater accountability;

(vi) Use data to identify and implement an instructional program that is research-based and "vertically aligned" from one grade to the next as well as aligned with State academic standards;

(vii) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students;

(viii) Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and

(ix) Provide appropriate social-emotional and community-oriented services and supports for students.

(2) A turnaround model may also implement other strategies such as—

- (i) Any of the required and permissible activities under the transformation model; or
- (ii) A new school model (e.g., themed, dual language academy).

(b) *Restart model.* A restart model is one in which an LEA converts a school or closes and reopens a school under a charter school operator, a charter management organization (CMO), or an education management organization (EMO) that has been selected through a rigorous review process. (A CMO is a non-profit organization that operates or manages charter schools by centralizing or sharing certain functions and resources among schools. An EMO is a for-profit or non-profit organization that provides "whole-school operation" services to an LEA.) A restart model must enroll, within the grades it serves, any former student who wishes to attend the school.

(c) *School closure.* School closure occurs when an LEA closes a school and enrolls the students who attended that school in other schools in the LEA that are higher achieving. These other schools should be within reasonable proximity to the closed school and may include, but are not limited to, charter schools or new schools for which achievement data are not yet available.

(d) *Transformation model.* A transformation model is one in which an LEA implements each of the following strategies:

(1) *Developing and increasing teacher and school leader effectiveness.*

(i) *Required activities.* The LEA must—

(A) Replace the principal who led the school prior to commencement of the transformation model;

(B) Use rigorous, transparent, and equitable evaluation systems for teachers and principals that—

(1) Take into account data on student growth (as defined in this notice) as a significant factor as well as other factors such as multiple observation-based assessments of performance and ongoing collections of professional practice reflective of student achievement and increased high-school graduations rates; and

(2) Are designed and developed with teacher and principal involvement;

(C) Identify and reward school leaders, teachers, and other staff who, in implementing this model, have increased student achievement and high-school graduation rates and identify and remove those who, after ample opportunities have been provided for them to improve their professional practice, have not done so;

(D) Provide staff with ongoing, high-quality, job-embedded professional development (e.g., regarding subject-specific pedagogy, instruction that reflects a deeper understanding of the community served by the school, or differentiated instruction) that is aligned with the school's comprehensive instructional program and designed with school staff to ensure they are equipped to facilitate effective teaching and learning and have the capacity to successfully implement school reform strategies; and

(E) Implement such strategies as financial incentives, increased opportunities for promotion and career growth, and more flexible work conditions that are designed to recruit, place, and retain staff with the skills necessary to meet the needs of the students in a transformation school.

(ii) *Permissible activities.* An LEA may also implement other strategies to develop teachers' and school leaders' effectiveness, such as—

(A) Providing additional compensation to attract and retain staff with the skills necessary to meet the needs of the students in a transformation school;

(B) Instituting a system for measuring changes in instructional practices resulting from professional development; or

(C) Ensuring that the school is not required to accept a teacher without the mutual consent of the teacher and principal, regardless of the teacher's seniority.

*(2) Comprehensive instructional reform strategies.*

(i) *Required activities.* The LEA must—

(A) Use data to identify and implement an instructional program that is research-based and “vertically aligned” from one grade to the next as well as aligned with State academic standards; and

(B) Promote the continuous use of student data (such as from formative, interim, and summative assessments) to inform and differentiate instruction in order to meet the academic needs of individual students.

(ii) *Permissible activities.* An LEA may also implement comprehensive instructional reform strategies, such as—

(A) Conducting periodic reviews to ensure that the curriculum is being implemented with fidelity, is having the intended impact on student achievement, and is modified if ineffective;

(B) Implementing a schoolwide “response-to-intervention” model;

(C) Providing additional supports and professional development to teachers and principals in order to implement effective strategies to support students with disabilities in the least restrictive environment and to ensure that limited English proficient students acquire language skills to master academic content;

(D) Using and integrating technology-based supports and interventions as part of the instructional program; and

(E) In secondary schools—

(1) Increasing rigor by offering opportunities for students to enroll in advanced coursework (such as Advanced Placement or International Baccalaureate; or science, technology, engineering, and mathematics courses, especially those that incorporate rigorous and relevant project-, inquiry-, or design-based contextual learning opportunities), early-college high schools, dual enrollment programs, or thematic learning academies that prepare students for college and careers, including by providing appropriate supports designed to ensure that low-achieving students can take advantage of these programs and coursework;

(2) Improving student transition from middle to high school through summer transition programs or freshman academies;

(3) Increasing graduation rates through, for example, credit-recovery programs, re-engagement strategies, smaller learning communities, competency-based instruction and performance-based assessments, and acceleration of basic reading and mathematics skills; or

(4) Establishing early-warning systems to identify students who may be at risk of failing to achieve to high standards or graduate.

(3) *Increasing learning time and creating community-oriented schools.*

(i) *Required activities.* The LEA must—  
(A) Establish schedules and implement strategies that provide increased learning time (as defined in this notice); and

(B) Provide ongoing mechanisms for family and community engagement.

(ii) *Permissible activities.* An LEA may also implement other strategies that extend learning time and create community-oriented schools, such as—

(A) Partnering with parents and parent organizations, faith- and community-based organizations, health clinics, other State or local agencies, and others to create safe school environments that meet students' social, emotional, and health needs;

(B) Extending or restructuring the school day so as to add time for such strategies as advisory periods that build relationships between students, faculty, and other school staff;

(C) Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment; or

(D) Expanding the school program to offer full-day kindergarten or pre-kindergarten.

*(4) Providing operational flexibility and sustained support.*

(i) *Required activities.* The LEA must—

(A) Give the school sufficient operational flexibility (such as staffing, calendars/time, and budgeting) to implement fully a comprehensive approach to substantially improve student achievement outcomes and increase high school graduation rates; and

(B) Ensure that the school receives ongoing, intensive technical assistance and related support from the LEA, the SEA, or a designated external lead partner organization (such as a school turnaround organization or an EMO).

(ii) *Permissible activities.* The LEA may also implement other strategies for providing operational flexibility and intensive support, such as—

(A) Allowing the school to be run under a new governance arrangement, such as a turnaround division within the LEA or SEA; or

(B) Implementing a per-pupil school-based budget formula that is weighted based on student needs.

If a school identified as a persistently lowest-achieving school has implemented, in whole or in part within the last two years, an intervention that meets the requirements of the turnaround, restart, or transformation models, the school may continue or complete the intervention being implemented.

## Appendix D. Participating LEA Memorandum of Understanding

### Background

Participating LEAs (as defined in this notice) in a State's Race to the Top plan are required to enter into a Memorandum of Understanding (MOU) or other binding agreement with the State that specifies the scope of the work being implemented by the participating LEA (as defined in this notice).

To support States in working efficiently with LEAs to determine which LEAs will participate in the State's Race to the Top application, the U.S. Department of

Education has produced a model MOU, which is attached. This model MOU may serve as a template for States; however, States are not required to use it. They may use a different document that includes the key features noted below and in the model, and they should consult with their State and local attorneys on what is most appropriate for their State that includes, at a minimum, these key elements.

The purpose of the model MOU is to help to specify a relationship that is specific to Race to the Top and is not meant to detail all typical aspects of State/LEA grant management or administration. At a minimum, a strong MOU should include the following, each of which is described in detail below: (i) Terms and conditions; (ii) a scope of work; and, (iii) signatures.

(i) *Terms and conditions:* Each participating LEA (as defined in this notice) should sign a standard set of terms and conditions that includes, at a minimum, key roles and responsibilities of the State and the LEA; State recourse for LEA non-performance; and assurances that make clear what the participating LEA (as defined in this notice) is agreeing to do.

(ii) *Scope of work:* MOUs should include a scope of work (included in the model MOU as Exhibit I) that is completed by each participating LEA (as defined in this notice). The scope of work must be signed and dated by an authorized LEA and State official. In the interest of time and with respect for the effort it will take for LEAs to develop detailed work plans, the scope of work submitted by LEAs and States as part of their Race to the Top applications may be preliminary. Preliminary scopes of work should include the portions of the State's proposed reform plans that the LEA is agreeing to implement. (Note that in order to participate in a State's Race to the Top application an LEA must agree to implement all or significant portions of the State's reform plans.)

If a State is awarded a Race to the Top grant, the participating LEAs (as defined in this notice) will have up to 90 days to complete final scopes of work (which could be attached to the model MOU as Exhibit II), which must contain detailed work plans that are consistent with the preliminary scope of work and with the State's grant application, and should include the participating LEA's (as defined in this notice) specific goals, activities, timelines, budgets, key personnel, and annual targets for key performance measures.

(iii) *Signatures:* The signatures demonstrate (a) an acknowledgement of the relationship between the LEA and the State, and (b) the strength of the participating LEA's (as defined in this notice) commitment.

- With respect to the relationship between the LEA and the State, the State's counter-signature on the MOU indicates that the LEA's commitment is consistent with the requirement that a participating LEA (as defined in this notice) implement all or significant portions of the State's plans.

- The strength of the participating LEA's (as defined in this notice) commitment will be demonstrated by the signatures of the LEA superintendent (or an equivalent authorized



signatory), the president of the local school board (or equivalent, if applicable) and the local teacher's union leader (if applicable).

Please note the following with regard to the State's Race to the Top application:

- In its application, the State need only provide an example of the State's standard Participating LEA MOU; it does not have to

provide copies of every MOU signed by its participating LEAs (as defined in this notice). If, however, States and LEAs have made any changes to the State's standard MOU, the State must provide description of the changes that were made. Please note that the Department may, at any time, request copies

of all MOUs between the State and its participating LEAs.

- Please see criterion (A)(1)(ii) and (A)(1)(iii), and the evidence requested in the application, for more information and ways in which States will be asked to summarize information about the LEA MOUs.

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## **Model Participating LEA Memorandum of Understanding**

This Memorandum of Understanding ("MOU") is entered into by and between \_\_\_\_\_ ("State") and \_\_\_\_\_

("Participating LEA"). The purpose of this agreement is to establish a framework of collaboration, as well as articulate specific roles and responsibilities in support of the State in its implementation of an approved Race to the Top grant project.

### **I. SCOPE OF WORK**

Exhibit I, the Preliminary Scope of Work, indicates which portions of the State's proposed reform plans ("State Plan") the Participating LEA is agreeing to implement. (Note that, in order to participate, the LEA must agree to implement all or significant portions of the State Plan.)

### **II. PROJECT ADMINISTRATION**

#### **A. PARTICIPATING LEA RESPONSIBILITIES**

In assisting the State in implementing the tasks and activities described in the State's Race to the Top application, the Participating LEA subgrantee will:

- 1) Implement the LEA plan as identified in Exhibits I and II of this agreement;
- 2) Actively participate in all relevant convenings, communities of practice, or other practice-sharing events that are organized or sponsored by the State or by the U.S. Department of Education ("ED");
- 3) Post to any website specified by the State or ED, in a timely manner, all non-proprietary products and lessons learned developed using funds associated with the Race to the Top grant;
- 4) Participate, as requested, in any evaluations of this grant conducted by the State or ED;
- 5) Be responsive to State or ED requests for information including on the status of the project, project implementation, outcomes, and any problems anticipated or encountered;
- 6) Participate in meetings and telephone conferences with the State to discuss (a) progress of the project, (b) potential dissemination of resulting non-proprietary products and lessons learned, (c) plans for subsequent years of the Race to the Top grant period, and (d) other matters related to the Race to the Top grant and associated plans.

#### **B. STATE RESPONSIBILITIES**

In assisting Participating LEAs in implementing their tasks and activities described in the State's Race to the Top application, the State grantee will:

- 1) Work collaboratively with, and support the Participating LEA in carrying out the LEA Plan as identified in Exhibits I and II of this agreement;
- 2) Timely distribute the LEA's portion of Race to the Top grant funds during the course of the project period and in accordance with the LEA Plan identified in Exhibit II;
- 3) Provide feedback on the LEA's status updates, annual reports, any interim reports, and project plans and products; and
- 4) Identify sources of technical assistance for the project.

**C. JOINT RESPONSIBILITIES**

- 1) The State and the Participating LEA will each appoint a key contact person for the Race to the Top grant.
- 2) These key contacts from the State and the Participating LEA will maintain frequent communication to facilitate cooperation under this MOU.
- 3) State and Participating LEA grant personnel will work together to determine appropriate timelines for project updates and status reports throughout the whole grant period.
- 4) State and Participating LEA grant personnel will negotiate in good faith to continue to achieve the overall goals of the State's Race to the Top grant, even when the State Plan requires modifications that affect the Participating LEA, or when the LEA Plan requires modifications.

**D. STATE RECOURSE FOR LEA NON-PERFORMANCE**

If the State determines that the LEA is not meeting its goals, timelines, budget, or annual targets or is not fulfilling other applicable requirements, the State grantee will take appropriate enforcement action, which could include a collaborative process between the State and the LEA, or any of the enforcement measures that are detailed in 34 CFR section 80.43 including putting the LEA on reimbursement payment status, temporarily withholding funds, or disallowing costs.

**III. ASSURANCES**

The Participating LEA hereby certifies and represents that it:

- 1) Has all requisite power and authority to execute this MOU;
- 2) Is familiar with the State's Race to the Top grant application and is supportive of and committed to working on all or significant portions of the State Plan;
- 3) Agrees to be a Participating LEA and will implement those portions of the State Plan indicated in Exhibit I, if the State application is funded,
- 4) Will provide a Final Scope of Work to be attached to this MOU as Exhibit II only if the State's application is funded; will do so in a timely fashion but no later than 90 days after a grant is awarded; and will describe in Exhibit II the LEA's specific goals, activities, timelines, budgets, key personnel, and annual targets for key performance measures ("LEA Plan ") in a manner that is consistent with the Preliminary Scope of Work (Exhibit I) and with the State Plan; and
- 5) Will comply with all of the terms of the Grant, the State's subgrant, and all applicable Federal and State laws and regulations, including laws and regulations applicable to the Program, and the applicable provisions of EDGAR (34 CFR Parts 75, 77, 79, 80, 82, 84, 85, 86, 97, 98 and 99).

**IV. MODIFICATIONS**

This Memorandum of Understanding may be amended only by written agreement signed by each of the parties involved, and in consultation with ED.

**V. DURATION/TERMINATION**

This Memorandum of Understanding shall be effective, beginning with the date of the last signature hereon and, if a grant is received, ending upon the expiration of the grant project period, or upon mutual agreement of the parties, whichever occurs first.

**VI. SIGNATURES****LEA Superintendent** (or equivalent authorized signatory) - required:

---

Signature/Date

---

Print Name/Title**President of Local School Board** (or equivalent, if applicable):

---

Signature/Date

---

Print Name/Title**Local Teachers' Union Leader** (if applicable):

---

Signature/Date

---

Print Name/Title**Authorized State Official** - required:

By its signature below, the State hereby accepts the LEA as a Participating LEA.

---

Signature/Date

---

Print Name/Title

**A. EXHIBIT I – PRELIMINARY SCOPE OF WORK**

LEA hereby agrees to participate in implementing the State Plan in each of the areas identified below.

Elements of State Reform Plans	LEA Participation (Y/N)	Comments from LEA (optional)
<b>B. Standards and Assessments</b>		
(B)(3) Supporting the transition to enhanced standards and high-quality assessments		
<b>C. Data Systems to Support Instruction</b>		
(C)(3) Using data to improve instruction:		
(i) Use of local instructional improvement systems		
(ii) Professional development on use of data		
(iii) Availability and accessibility of data to researchers		
<b>D. Great Teachers and Leaders</b>		
(D)(2) Improving teacher and principal effectiveness based on performance:		
(i) Measure student growth		
(ii) Design and implement evaluation systems		
(iii) Conduct annual evaluations		
(iv)(a) Use evaluations to inform professional development		
(iv)(b) Use evaluations to inform compensation, promotion, and retention		
(iv)(c) Use evaluations to inform tenure and/or full certification		
(iv)(d) Use evaluations to inform removal		
(D)(3) Ensuring equitable distribution of effective teachers and principals:		
(i) High-poverty and/or high-minority schools		
(ii) Hard-to-staff subjects and specialty areas		
(D)(5) Providing effective support to teachers and principals:		
(i) Quality professional development		
(ii) Measure effectiveness of professional development		
<b>E. Turning Around the Lowest-Achieving Schools</b>		
(E)(2) Turning around the lowest-achieving schools		

For the Participating LEA

\_\_\_\_\_  
Authorized Signature/Date\_\_\_\_\_  
Print Name/Title

For the State

\_\_\_\_\_  
Authorized Signature/Date\_\_\_\_\_  
Print Name/Title

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## Federal Register

Vol. 75, No. 71

Wednesday, April 14, 2010

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